

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1193

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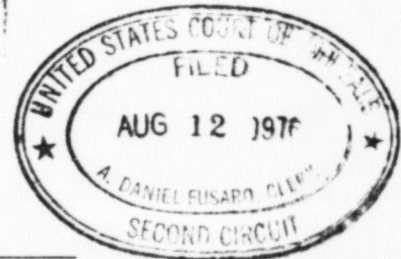
IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
CLAYBURN C. BOOTH,
Defendant-Appellant.

SUPPLEMENTAL APPENDIX

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Western District of New York,
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Buffalo, New York 14202.

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of Counsel.



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M. A. Pasquarella, for Government, Direct.

1 PROCEEDINGS: After recess, 11:30 a.m.

2 APPEARANCES: As before noted.

3

4 (Defendant present.)

5 (Jury present.)

6

7 MICHAEL A. PASQUARELLA (244 Persidio
8 Place, Williamsville, New York), a witness called by and in
9 behalf of the Government, having been first duly sworn, was
10 examined and testified as follows:

11

12 DIRECT EXAMINATION BY MR. BURNS:

13 Q. Mr. Pasquarella, where are you employed?

14 A. I am a special agent with the Intelligence Division of
15 the Internal Revenue Service.

16 Q. And how long have you been employed by the Internal
17 Revenue Service?

18 A. As a special agent, eight and a half years and with
19 the Internal Revenue Service, ten and a half years.

20 Q. Are you a graduate of Canisius College?

21 A. Yes, I am.

22 Q. And what degree did you receive?

23 A. Bachelor of Science in Business Administration.

24 Q. And have you had any training since joining the
25 Internal Revenue Service?

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- 1 A. Yes, I have.
- 2 Q. And what did your training consist of?
- 3 A. My initial training was approximately a six-week course
- 4 in basic income tax law and also an approximately
- 5 six-week course with the Treasury Law Enforcement
- 6 School in Washington, D. C. and another six weeks
- 7 course at special agents school which was held in
- 8 Washington, D. C.
- 9 Q. Now, what are the duties and function of a special
- 10 agent?
- 11 A. The function of a special agent is to investigate the
- 12 possibilities of criminal violations of the Internal
- 13 Revenue Law.
- 14 Q. And do you belong to a particular division within the
- 15 Internal Revenue Service?
- 16 A. Yes, I do.
- 17 Q. And that division is what?
- 18 A. Intelligence Division.
- 19 Q. And what is the function of the Intelligence Division?
- 20 A. To investigate possibility of criminal violations of
- 21 the Internal Revenue Laws.
- 22 Q. And how would you compare the Intelligence Division's
- 23 function with the Audit Division's function?
- 24 A. The Audit Division conducts civil audits of income tax
- 25 returns.

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- 1 Q. Are the persons in the Audit Division referred to by a
2 different name than special agent?
- 3 A. Yes, they are. They are called revenue agents.
- 4 Q. All right. Now, how long have you been assigned to the
5 Buffalo Field Office?
- 6 A. Since August of 1967.
- 7 Q. And have you ever conducted any investigations, any
8 criminal investigations into the tax returns of individuals?
- 9 A. Yes, I have.
- 10 Q. Did you participate in the investigation relating to a
11 Dr. Clayburn C. Booth?
- 12 A. Yes, I did.
- 13 Q. And when did you first become involved in the case?
- 14 A. I was assigned the investigation on December 2, 1969 and
15 I did not interview the doctor until December 16th of
16 1969.
- 17 Q. And what happened on December 2, 1969?
- 18 A. That was the day that the case was just put into my
19 inventory, assigned to me on December 2nd of 1969.
- 20 Q. And did you do any initial preparations before you
21 contacted Dr. Booth?
- 22 A. Yes, I did. I analyzed the information that Revenue
23 Agent Luke had received from the doctor and his
24 accountant and I also talked to Revenue Agent Luke
25 regarding what he had done up to that point.

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- 1 Q. And did you, in fact, on some date contact Dr. Booth?
- 2 A. Yes, I did.
- 3 Q. And when was that first contact made?
- 4 A. On December 16th of 1969.
- 5 Q. And how did you make the contact with him?
- 6 A. I originally went to Dr. Booth's residence, 532
- 7 Memorial Parkway. He wasn't in at the time and I left
- 8 a message and then he contacted me later on that day
- 9 at Mr. Luke's office in Niagara Falls and we scheduled
- 10 an appointment and he appeared about 3:00 p.m. that
- 11 day.
- 12 Q. Where did he appear?
- 13 A. At the Internal Revenue Service office in Niagara Falls,
- 14 New York.
- 15 Q. And what, if anything, did you tell him when he
- 16 arrived at the office?
- 17 A. That was the first time I had ever met the doctor and
- 18 the first thing, I introduced myself to him. I showed
- 19 him my credentials and I told him that, as a special
- 20 agent, one of my functions was to investigate the
- 21 possibilities of criminal violations of the Internal
- 22 Revenue laws. I told him that Revenue Agent Luke had
- 23 referred the case to the Intelligence Division and
- 24 that it was now assigned to me and that I would be in
- 25 charge of the investigation and Revenue Agent Luke

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1 would be there to assist me. I told him that there
2 was an understatement of income based on the years
3 1967 and 1968, the years that I would be investigating.
4 I told him that it would be my job to determine if,
5 in fact, there was an understatement and if the under-
6 statement was a willful understatement, but before I
7 asked Dr. Booth any questions, I read a statement to
8 him.

9 Q. Mr. Pasquarella, let me show you what has been marked
10 as Court Exhibit 31. Is the statement you read to him
11 contained in Court Exhibit 31?

12 A. Yes, it is.

13 Q. Would you read it, please?

14 A. "In connection with my investigation of your tax
15 liability, I would like to ask you some questions.
16 However, first I advise you that under the Fifth
17 Amendment to the Constitution of the United States
18 I cannot compel you to answer any questions nor to
19 submit any information if such answers or information
20 might tend to incriminate you in any way. I also
21 advise you that anything which you say, that any
22 information which you submit may be used against you
23 in any criminal proceeding which may be undertaken.
24 I advise you further that you may if you wish seek
25 the assistance of an attorney before responding."

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- 1 Q. Did you read this information or read this statement
2 from any card?
- 3 A. Yes, I did.
- 4 Q. And what card is that?
- 5 A. It is a card that we kept right in our credentials.
6 I just opened it up, took the card out and read it to
7 him.
- 8 Q. And what did you do after you read the card to Dr.
9 Booth?
- 10 A. I asked Dr. Booth if he understood what I read to him
11 and he said "Yes".
- 12 Q. And did Dr. Booth then answer questions?
- 13 A. Yes, he did.
- 14 Q. Did Dr. Booth give you any personal information regarding
15 his background?
- 16 A. Yes, he did.
- 17 Q. What did he tell you?
- 18 A. He told me that he was born in Jamaica, New York in
19 May of 1928; that he married the former Grete Balster
20 in Germany; that he had served in the army in Germany
21 and that he was honorably discharged from the army in
22 1952.
- 23 Q. Did he give you any information regarding his educational
24 background?
- 25 A. Yes, he did. He told me that he attended City College

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1 of New York, New York University, and that he had
2 graduated from medical school at the University of
3 Heidelberg in Germany.

4 Q. And did he give you any information regarding his
5 business or his profession at the time you interviewed
6 him?

7 A. Yes, he did.

8 Q. And what did he tell you?

9 A. He told me that he had been a practicing physician since
10 1964 and that he, - as far as the records of his
11 business, he said that a disbursement record was kept
12 wherein all the expenses of his business were recorded.

13 Q. He also said that as far as his sources of income,
14 they came from his practice, from wages, from interest
15 and from dividends. He said his wife had no independent
16 source of income other than maybe joint interest income
17 or dividends which were reported on the tax return.

18 Q. Did he tell you what, if any, records he maintained
19 regarding his income?

20 A. He said that he kept no formal records of any income.
21 He said he relied solely on the receipt of Form 1099
22 from various organizations such as Blue Shield and
23 Blue Shield, Niagara County Social Services and from
24 the City of Niagara Falls. He also said that any cash
25 that he received from his patients he would record on

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1 slips of paper every day, keep the slips of paper on
2 his desk and then at the end of the month he would
3 total up these individual slips and mark it down for
4 the month and that he would discard those individual
5 slips of paper and that was the only record that he
6 kept of his income.

7 Q. Did he mention anything about receipts, a receipt book
8 that was maintained?

9 A. Yes. There is a, - well, as far as the receipts, the
10 only receipts he told me that he recorded were these
11 cash receipts, just the cash receipts.

12 Q. But did he mention the form in which this record was
13 maintained? That is, whether in a book or a journal
14 or slips of paper or in what fashion?

15 A. The only record that he had of the cash was these
16 daily receipts that he tallied up every day and then
17 at the end of the month he made a monthly tally and
18 he put that on a slip of paper.

19 Q. Did he tell you or did you discuss the manner in which
20 his tax returns had been prepared?

21 A. Yes, I did.

22 Q. And what did Dr. Booth tell you?

23 A. Dr. Booth said that Mr. Lonardo prepared his returns
24 for the years 1967 and 1968 from the information he
25 had provided to him. He said that Mr. Lonardo appeared

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1 at his office at least quarterly to prepare quarterly
2 payroll tax returns and that Mr. Lonardo would review
3 the checks issued by Dr. Booth and he would record
4 them in a journal so that he could come up with totals
5 which would be deducted at the end of the year when
6 the tax return was being prepared. After Dr. Lonardo,
7 excuse me, after Mr. Lonardo finished preparation of
8 the return, discussed it with Dr. Booth and then Dr.
9 Booth filed it.

10 Q. Did you have the original 1967 and 1968 returns with
11 you that day?

12 A. Yes, I did.

13 Q. And what, if anything, did you do with them?

14 A. I showed them to Dr. Booth. He examined them, looked
15 at them. He recognized his signature and said that
16 those were the returns that he filed.

17 Q. Now, did you discuss with Dr. Booth any bank accounts?

18 A. Yes, I did.

19 Q. And what did he tell you?

20 A. Dr. Booth told me that he maintained both a checking
21 account and a savings account at the Marine Midland
22 Trust Company in Niagara Falls. He told me that during
23 the year 1968 he had deposited approximately \$13,000
24 into his checking account at the Marine Midland Bank.

25 Q. Did he say where this \$13,000 came from?

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- 1 A. He told me that over a period of years, he had
2 accumulated approximately \$16,000 in cash which he had
3 kept in a dresser drawer of his home. I asked Dr.
4 Booth or I explained to Dr. Booth what I meant by
5 cash on hand.
- 6 Q. How did you explain that?
- 7 A. I told Dr. Booth that what I was considering cash on
8 hand would be cash that he would have on his person or
9 anywhere in his home, but not money that would be on
10 deposit in any bank, and Dr. Booth said he did keep
11 this money in his dresser drawer. It included fives,
12 tens, twenties, fifties and hundred dollar bills.
- 13 Q. Did he give any reason as to why he maintained this
14 cash in his home?
- 15 A. I asked him why he didn't put the money into either his
16 checking account or his savings account and he said
17 he really had no reason why he didn't put it in the
18 account. He wanted to keep it handy and available for
19 him to purchase some medical equipment that he would
20 need in his practice.
- 21 Q. Did he tell you approximately what amounts he had on
22 hand at the end of each of the years 1966, 1967 and
23 1968?
- 24 A. Yes, he did. He said as of 12-31-66 he had the sixteen
25 thousand. He also had sixteen thousand as of the end

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1 of 12-31-67 and then during the year of 1968 he
2 deposited thirteen thousand of that sixteen thousand
3 so he only had \$3,000 left as of 12-31-68.

4 Q. Did Dr. Booth provide you with any other information
5 regarding his assets or liabilities?

6 A. Yes, he did. When I asked him he told me that he
7 owned his home. He also owned a summer home in
8 Wilson, New York; that he owned a boat and a car and
9 that he also had a stock brokerage account at Merrill,
10 Lynch, Pierce, Fenner & Smith.

11 Q. Did you ask him about any other items of income or
12 any other items of moneys that he may have received
13 during these calendar years?

14 A. Yes. I asked him if he had any nontaxable sources of
15 income such as gifts, inheritances, or insurance
16 proceeds and he said he had none.

17 Q. Did Dr. Booth offer any explanation for what appeared
18 to be an understatement of income?

19 A. Yes. He told me that because he deposited this money
20 that he had accumulated from prior years into his
21 account in 1968, that that would be part of it, part
22 of the reason for the understatement and also he
23 explained that income that he would have received in
24 late 1966 he wouldn't have deposited until early 1967,
25 and income that he would have received in late 1967

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1 would not have been deposited until early 1968.

2 Q. To you as a special agent, what is the significance
3 of the statement by a taxpayer that he had accumulated
4 certain funds over a period of time and not deposited
5 those funds into a bank account until a subsequent year?

6 A. Well, if he used funds from prior years and deposited
7 it into an account in the year that I was investigating,
8 well, then you would have to not count that as income
9 that he earned in the year under investigation.

10 Q. Are you saying that it would not be taxable then?

11 A. That is true.

12 Q. All right. Did you, after the interview with Dr. Booth
13 on that date, have a subsequent interview with him?

14 A. Yes, I did.

15 Q. When did that interview take place?

16 A. February 17th of 1970.

17 Q. Can you tell me how that --

18

19 THE COURT:

20 We come to a question of law here,
21 ladies and gentlemen. It is true if a
22 person receives cash, earns cash in a
23 year, - in the year 1975, let us say,
24 and puts the cash in an envelope in a
25 drawer in his home and deposits the
cash the following year, that it does

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1 not matter when the deposit is made,
2 it is earned and it is taxable when it
3 is received.
4

5 BY MR. BURNS:

6 Q. Thank you. During the initial interview you had
7 December 16th, did you have any, - did Dr. Booth mention
8 anything about checks that he had received?

9 A. No, he didn't.

10 Q. Now, how did the interview of February 17th take, -
11 how was that arranged?

12 A. By a telephone call to Dr. Booth and we scheduled it.

13 Q. And where did the interview take place?

14 A. Again, it was in Mr. Luke's office in Niagara Falls.

15 Q. And what subjects did you discuss with Dr. Booth on
16 that day?

17 A. Well, I had told him that since our interview of
18 December 16th that I had come up with additional
19 information that I would like to ask him some certain
20 questions about, so that is where we started. I
21 mentioned, - I first started off with some mortgage
22 statements that I had secured from the bank during
23 the interim from my first interview to this one and
24 I asked him in particular why he hadn't filled in the
25 blank which stated cash on hand. It was left blank

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1 and I asked him why he didn't put any amount in there
2 and he said that he didn't know he had to and no one
3 told him specifically that he had to so he just didn't.

4 Q. Did you discuss any of the cash expenses, cash business
5 expenses that the doctor had?

6 A. Yes. I asked the doctor if since our first interview
7 he could think of any other expenses he would have paid
8 in the years of '67 and '68 that were paid with cash
9 money, cash business expenses, and he said he had no
10 more than what was already discussed.

11 Q. And did you also discuss with him the expenses that he
12 paid for with checks?

13 A. Yes. I asked the doctor if he was sure that he had
14 claimed all the checks, all the business expenses paid
15 by check, and he said that he and he alone issued the
16 checks for business expenses and that no one else in
17 his office did. He said that Mr. Lonardo would come in
18 on a monthly basis and he would review the checks
19 written by Dr. Booth and then he would prepare a
20 schedule of them allocating them according to the
21 particular expense involved.

22 Q. Did you have any discussion with Dr. Booth regarding
23 any personal expenses he may have had during this time,
24 the two years in question?

25 A. Yes, I did. I asked him specifically if he could

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1 estimate what his personal living expenses were and
2 he said they would be approximately \$2,100 a year for
3 food, clothing and entertainment and other miscellaneous
4 items.

5 Q. And did you further discuss with him the bank deposit
6 analysis that you and Mr. Luke had been working on?

7 A. Yes. He said that he had given it consideration since
8 our interview of December 16th and he said that he
9 still maintains that the understatement in 1968 was
10 attributable to money that he had earned in the prior
11 year but that he did not deposit until 1968.

12 Q. And did you have any further discussion regarding the
13 cash receipts that the doctor had during these calendar
14 years?

15 A. Yes. I asked him again if there was any error in the
16 cash office receipts that he did report and he said
17 no, he was positive because he told me, - well, he said
18 that about ninety-nine per cent of his income is
19 received by checks from Blue Shield and from Niagara
20 County Social Services.

21 Q. Did he offer during this interview any explanations
22 to the apparent understatement of income?

23 A. Just the fact that he still maintained that the
24 understatement in 1968 was due to income that he had
25 earned in 1967 but did not deposit until 1968. He

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1 also said that there could have been the possibility
2 of an error in the amount that was reported on the
3 1099 that was issued by Blue Shield and by Niagara
4 County Social Services. He said possibly they paid
5 him more but they put a lesser amount on the 1099.
6 I told him that I was in the process of getting the
7 individual checks issued to him by Niagara County and
8 by Blue Shield and if there was a discrepancy, I would
9 tell him.

10 Q. Now, did you continue working on the case after this
11 interview in February of 1970?

12 A. Yes, I did.

13 Q. For approximately how long?

14 A. I had the case up until January 11th of '71 but I did
15 not work exclusively on this case. I had other cases
16 in my inventory that I was working.

17 Q. And who did you work with on this case?

18 A. With Revenue Agent Luke.

19 Q. And what is the relationship between the revenue
20 agent and the special agent during the course of these
21 investigations?

22 A. The revenue agent, - let me start over. The special
23 agent is the one who goes out and makes the field
24 contacts. For example, I went out and I contacted
25 Blue Shield. I went out and contacted Niagara County

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1 Social Services, the City of Niagara Falls and a few
2 others. I would go out to secure the documentation,
3 any evidence that they could provide to come up with
4 the total income that they paid him and then any
5 checks of figures that I would get from these various
6 people I would ask, - not ask, - I would tell the
7 revenue agent to prepare a schedule and that schedule
8 would have been prepared under my direction.

9 Q. Now, was this case at some point reassigned to another
10 individual?

11 A. Yes, it was.

12 Q. And who was it reassigned to?

13 A. To Special Agent Ciesla on January 11th of 1971.
14

15 MR. BURNS: All right. I have no other
16 questions.

17 MR. FEIN: May I approach the bench.
18

19 (Side bar conference off the
20 record held between Court and counsel.)
21

22 CROSS EXAMINATION BY MR. FEIN:

23 Q. Mr. Pasquarella, you are a special agent and you worked
24 with Mr. Luke on an investigation of Dr. Booth's
25 matter, right?

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- 1 A. Yes, I did.
- 2 Q. And you discontinued your participation in the
3 investigation?
- 4 A. Yes, sir.
- 5 Q. Did you write a report for all of the time that you
6 spent on this audit?
- 7 A. A report?
- 8 Q. Yes.
- 9 A. No, I did not.
- 10 Q. And you just turned the papers over to Mr. Ciesla,
11 did you?
- 12 A. Yes, sir.
- 13 Q. All the work that you did, but there is no record of
14 what you did as far as your examination of third-party
15 records or anything of that nature?
- 16 A. There is a chronological worksheet that I maintained
17 during the time that I had the investigation.
- 18 Q. That is a chronological activity sheet, but you didn't
19 write any report at the time, any formal report turning
20 the thing over to Mr. Ciesla?
- 21 A. No, I did not.
- 22 Q. Do you know how the final report or the final result, -
23 what the final result is or did you just wash your
24 hands of the case?
- 25 A. I had nothing to do with writing the final report. I

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1 know of it.

2 Q. You just know that they recommended prosecution?

3 A. Yes.

4 Q. But you don't know anything about the amounts, do you?

5 A. Yes, I do. I know just from being here on the trial.

6 Q. Well, you weren't in this room, were you?

7 A. No, I wasn't.

8 Q. Then you didn't hear any of the testimony, did you?

9 A. No, I didn't.

10 Q. Oh, but you know it from having looked at papers
11 downstairs, is that what you are saying?

12 A. Yes, sir.

13 Q. Now, this case was referred to you by Ronald Luke, the
14 Revenue Agent, right?

15 A. It was referred to the Intelligence Division.

16 Q. And it was assigned to you?

17 A. Yes, sir.

18 Q. And that's how you got the case?

19 A. Yes, sir.

20 Q. And when you had referral report which is Form 2797,
21 with reference to C24, Mr. Luke told you about this
22 cash on hand that Dr. Booth had told him about before,
23 didn't he?

24 A. Yes, he did.

25 Q. Doesn't this report say that he didn't believe the

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1 doctor?

2 A. I will have to look at the report.

3

4 MR. BURNS: Can we have the question read
5 back, please?

6 THE COURT: Mr. Knisley.

7

8 (The following was read by the
9 court reporter:

10 "Q. Doesn't this report say he
11 didn't believe the doctor?")

12 MR. BURNS: I will object, your Honor. That
13 is not a proper question.

14 THE COURT: I am sorry. Would you repeat
15 it, Mr. Knisley.

16

17 (The following question read by
18 the reporter:

19 "Q. Doesn't this report say he
20 didn't believe the doctor?")

21

22 MR. BURNS: Referring to --

23 MR. FEIN: Luke.

24 THE COURT: The report says what it says.

25 THE WITNESS: Right. I can't find where he says

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he doesn't believe him.

BY MR. FEIN:

Q. He made no mention, - this statement. What does that second paragraph read, Paragraph Number 2 say?

A. Read the paragraph?

Q. Yes.

A. "Taxpayer opened a saving account in 1962 and made regular deposits to this account over the years. Therefore, it appears unreasonable that taxpayer would have a large sum of cash in his home."

Q. Doesn't, - didn't Mr., - didn't Luke also state that --

MR. BURNS:

Your Honor, I just can't see. I must object. I don't see how that bears on Mr. Pasquarella.

THE COURT:

I sustain the objection. You may show this to the witness to see if it refreshes his recollection.

MR. FEIN:

Okay.

THE COURT:

But since it is a report made by Mr. Luke, it is not proper to cross examine this witness by reading it back at this time. He did not make it. Mr. Luke made it. Mr. Luke's conclusions

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are Mr. Luke's. They are not Mr.
Pasquarella's.

BY MR. FEIN:

Q. All right. Did the fact that the doctor told you he
had thirteen thousand in cash make any difference?

A. Yes, it did.

Q. How?

A. As I explained before, if he had this \$13,000 and
deposited it in 1968, well then, that income could not
have been considered taxable income in 1968.

Q. How would he know that you were talking about deposits?
What has deposits got to do with income?

A. I don't know what he knew.

Q. But the fact that money is deposited doesn't, in and of
itself, - isn't, in and of itself, tantamount to
income, is it?

A. It is true. It is not automatically income, that is
true.

Q. So that he told you he had the thirteen thousand and
put it in the bank account, that wouldn't make any
difference, would it?

A. If he had income from a prior year and deposited it
in 1967, that could not have been considered as
taxable income to him in 1968.

M. A. Pasquarella, for Government, Cross.

- 1 Q. But he wasn't, - at that point he wasn't concerned
2 about what was in the bank; he didn't report his income
3 on what was put into the bank, did he?
- 4 A. I don't know what he was concerned about, Mr. Fein.
- 5 Q. That's true, and therefore when he was telling you
6 about the \$13,000, it didn't mean anything, did it?
- 7 A. Yes, it did, but he was explaining the understatement
8 of income. In other words, these excess deposits that
9 we were aware of at that time, he was explaining those
10 away by saying that that was income that he received in
11 prior years and that he had saved over a number of
12 years and then deposited in 1968.
- 13 Q. You are saying that because there was excess deposits
14 that that was something wrong?
- 15 A. No. That was the reason why I was in the case.
- 16 Q. Yes, you were, - you had arrived at a conclusion, the
17 fact that there was money, - that there were deposits
18 of a certain amount which may or may not have been in
19 excess of what was reported on his tax return, you were
20 trying to make that comparison into meaning something,
21 weren't you?
- 22 A. At that time I had not concluded anything. I was
23 investigating the case at the time. The conclusions
24 were made a lot later on in the investigation.
- 25 Q. And do you know what the conclusion was about the

M. A. Pasquarella, for Government, Cross.

1 \$13,000?

2 A. All I know, that the case was recommended and that's
3 why we are here today.

4 Q. No. I asked you about the \$13,000.

5 A. Yes, I do know.

6 Q. What was done with the \$13,000?

7 A. The \$13,000 cash on hand I did make, - before I
8 transferred the case I made an analysis of every
9 single deposit of Dr. Booth's and not ten cents was
10 deposited in cash.

11 Q. You knew that, didn't you?

12 A. Yes, I did.

13 Q. So you knew that maybe he had made an error when he
14 was talking, he was trying to explain to the best of
15 his ability the question put to a layman by an
16 experienced investigator as to why there was a difference,
17 isn't that true?

18 A. I didn't follow the question.

19 Q. Okay, I am sorry. Assuming that the doctor, and I
20 think it is a fair assumption because I believe you
21 have in your report that he told you he didn't have
22 any accounting or tax experience?

23 A. Yes, he did tell me that.

24 Q. And he was a layman and you two agents were asking him
25 questions in regard to alleging, stating to him that

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WESTERN DISTRICT OF NEW YORK

M. A. Pasquarella, for Government, Cross.

1 there appeared to be an error as far as computing his
2 taxable income was concerned?

3 A. Yes, sir.

4 Q. And he was trying to help you to explain, to clarify
5 that, wasn't he?

6 A. That was the explanation that he offered to me, yes.

7 Q. Right. He wasn't trying to mislead you in any way;
8 that is what he thought he believed.

9
10 MR. BURNS: I object to that. That calls for
11 obviously a conclusion.

12 MR. FEIN: I am sorry. I didn't mean it that
13 way, your Honor. I withdraw it.

14 THE COURT: All right. I will sustain the
15 objection.

16
17 BY MR. FEIN:

18 Q. But when you get down to it, you didn't have to deal
19 with the thirteen, - you didn't give him any credit
20 for the \$13,000, did you?

21 MR. BURNS: I will object on the grounds Mr.
22 Pasquarella got out of the case and
23 never prepared the final report.

24 THE COURT: Mr. Pasquarella can answer it.
25 If he did not, he can say he did not.

M. A. Pasquarella, for Government, Cross.

1 If somebody else did it and he knows,
2 he can say. Overruled.

3 THE WITNESS:

I can't because even though I had
4 this case for a year in my inventory,
5 I worked a total of 176 hours on this
6 case, very sporadically during the year
7 of 1970 and I didn't make any final
8 analysis, any final schedules, nothing
9 was finalized at all by me.

10
11 BY MR. FEIN:

12 Q. But in your, - isn't the problem that arises when
13 somebody makes an allegation that he had cash on hand
14 that you would have to give him credit for that cash
15 on hand in arriving at the correct taxable income using
16 the bank deposit method, isn't that right?

17 A. That's true.

18 Q. And do you know, - did you when you were working on it
19 intend to give him credit for the \$13,000?

20 A. After I had made some additional inquiries based on
21 the statement that he gave me.

22 Q. What was your result going to be?

23 A. What was it going to be?

24 Q. Yes.

25 A. I don't know what it would have been because I don't

M. A. Pasquarella, for Government, Cross.

1 have all the additional information that was gathered
2 in this case.

3 Q. But in your, - at the stage that you were in, there
4 was a simple statement made you check all the deposit
5 slips, you just finished saying that you knew at the
6 time that no cash had been deposited so you weren't
7 going to give him credit, were you?

8 A. At that time, no.

9 Q. At any time?

10 A. Well, at that time, at the time I had the case I would
11 say no.

12 Q. And do you know whether or not he did get credit for it?

13 A. I don't know.

14 Q. You do know that that is why he is here, don't you, or
15 isn't that one of the reasons that he is here?

16 A. What do you mean specifically?

17

18 MR. FEIN: All right. Never mind.

19 MR. BURNS: Your Honor, Mr. Pasquarella has
20 already stated what he knows.

21 MR. FEIN: I am sorry. I withdraw it.

22 THE COURT: The question is withdrawn.

23

24 BY MR. FEIN:

25 Q. But he did tell you all the time that the income had

M. A. Pasquarella, for Government, Cross.

1 been prepared on these 1099's, from his 1099 Forms,
2 is that right?

3 A. Yes, sir.

4 Q. All of the statements that Dr. Booth made as to his
5 assets, his residence, his insurance, et cetera, et
6 cetera, were any of these, - did you find any of these
7 to be in error?

8 A. I did not check out all those statements. I am sure
9 that Special Agent Ciesla did.

10 Q. Well, the statements you checked out, what did you find
11 out?

12 A. Well, which one are you referring to?

13 Q. You tell me which was right and which was wrong.

14 A. Do you mean whether he had a brokerage account in
15 Merrill Lynch or whether he didn't?

16 Q. Yes.

17 A. I don't remember whether I got the information or
18 Special Agent Ciesla did.

19 Q. All right.

20 A. The home that he purchased I am relatively certain that
21 I secured the bank records regarding the mortgage.

22 Q. You did or you didn't?

23 A. I am relatively certain I did because I did canvass
24 the banks right after my initial interview with the
25 doctor. The 1967 Buick was purchased, I don't remember

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M. A. Pasquarella, for Government, Cross.

1 where it was purchased. I don't remember getting any
2 documentation on that.

3 Q. Well, you don't know that anything he said was wrong,
4 do you?

5 A. No, I can't answer that whether it was right or whether
6 it was wrong. That is just what he told me.

7 Q. You can't say it was wrong, can you?

8 A. No, I can't say that.

9 Q. And you did find, didn't you, before you completed
10 your departure that he had, in fact, made, - that
11 certain fees he had received in the latter part of
12 '66 and '67 had, in fact, been deposited by him in the
13 subsequent years?

14 A. Yes, sir.

15 Q. There is no doubt about that either, is there?

16 A. No, sir.

17 Q. Now, that would entail him to have an adjustment,
18 wouldn't it?

19 A. For those particular year-end deposits, yes.

20 Q. You would have to adjust trying to get at the bank
21 deposit?

22 A. That adjustment and others, yes.

23 Q. All right. Did you find he had a checking account and
24 a savings account?

25 A. Yes, sir.

M. A. Pasquarella, for Government, Cross.

- 1 Q. Did you find that he did not have a safe deposit
2 box?
- 3 A. He did not.
- 4 Q. Did you make inquiry?
- 5 A. He did not have.
- 6 Q. Did you make that inquiry?
- 7 A. He told me he did not have a safe deposit box.
- 8 Q. And did you check that out?
- 9 A. Yes, and he did not have a safe deposit box.
- 10 Q. Did you check out any of his statements that he made
11 to you about his background?
- 12 A. No, I personally didn't.
- 13 Q. Okay. Did you check out this bit about a disbursements
14 ledger?
- 15 A. He had, - Dr. Booth had given Mr. Luke some records.
- 16 Q. You had the records before you even went there, didn't
17 you?
- 18 A. Yes, sir.
- 19 Q. And wasn't that what there was in your possession?
- 20 A. The records that he had given to Mr. Luke, yes.
- 21 Q. All right, and didn't he tell you that, - didn't you
22 have in those records Mr. Leonardo's summary of how he
23 prepared his return showing that he only used 1099's
24 and things of that sort?
- 25 A. All I had is what, - were the records that were prepared

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WESTERN DISTRICT OF NEW YORK

M. A. Pasquarella, for Government, Cross.

1 by Mr. Lonardo.

2 Q. And didn't those records show that that is how the
3 income was reached, had been prepared?

4 A. Yes.

5 Q. So everything outside of the misinformation, if you
6 will, about the cash on hand was, in fact, true, wasn't
7 it?

8 A. What do you mean by "misinformation"? I can't answer
9 that question.

10 Q. Well, we are assuming that he didn't have any cash on
11 hand, assuming that he didn't have any cash on hand.

12 A. Now, what is your question?

13 Q. Well, isn't everything else he said correct?

14 A. I would say if we, - I am not sure whether we went
15 over every single item. I hate to make a general
16 answer of "Yes" when it is a two and a half page
17 memorandum.

18 Q. Now, there is a reference here on C-32, the memorandum
19 of February 17th. "I showed Dr. Booth two mortgage
20 applications regarding his personal residence and
21 summer cottage. Dr. Booth said he did not complete
22 the block entitled 'Cash on Hand' on either application
23 because he didn't think it was necessary to do so and
24 no one specifically asked him anything about cash on
25 hand". Was there any reason for showing him these two

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M. A. Pasquarella, for Government, Cross.

1 mortgage applications?

2 A. Yes, because he had told me in December of '69 that
3 he had \$16,000 cash on hand, whereas on these particular
4 mortgage applications wherever it asked for a cash
5 on hand figure, there wasn't any figure at all.

6 Q. So that meant to you that you weren't going to give
7 him credit for cash on hand when you came to making
8 up your report, isn't that so?

9 A. I couldn't answer that question because I did not
10 proceed that long with this case, Mr. Fein.

11 Q. Well, assuming you had.

12

13 MR. BURNS: I object, your Honor.

14

15 BY MR. FEIN:

16 Q. Wouldn't that have supported your position not to give
17 him credit?

18

19 THE COURT: Mr. Fein, please. Before you put
20 a question, think about the question
21 you are going to put and then when there
22 is an objection, wait until there is a
23 ruling.

24 MR. FEIN: I am sorry, your Honor.

25 THE COURT: Mr. Knisley or no one can keep this

M. A. Pasquarella, for Government, Cross.

1 straight if everyone tries to talk at
2 the same time. All right, back up and
3 put another question.
4

5 BY MR. FEIN:

6 Q. Okay. You are an experienced special agent, you have
7 conducted many special investigations, isn't that so?

8 A. Yes, sir.

9 Q. And if a taxpayer makes a statement to you that he has
10 cash on hand and you subsequently go to a third party
11 source and you find a note to the effect or a statement
12 made by the taxpayer to the effect that he didn't have
13 any cash on hand on that statement, that would tend to
14 corroborate your position and you wouldn't give him
15 credit for having cash on hand, isn't that so?

16 A. Well, it would tend to. It wouldn't necessarily mean
17 that it would be exactly so, but I would consider that
18 and all other information that I had gathered during
19 the investigation.
20

21 THE COURT:

Mr. Fein, that is a hypothetical
22 question. It is just impossible to
23 answer. We have to come to the facts
24 and circumstances of each case, so let
25 us be particular, please, if you can.

M. A. Pasquarella, for Government, Cross.

1 MR. FEIN: Well, your Honor, frankly, --

2 THE COURT: Why not put a question. Take one
3 question at a time.

4

5 BY MR. FEIN:

6 Q. Okay. These memorandums are specifically concerned
7 about cash on hand, aren't they? The prime motivating
8 factor in your testimony has been about the cash on
9 hand, hasn't it?

10 A. I testified about a lot of things, not only cash on
11 hand; cash business expenses, cash income.

12 Q. All right. What did you find about the cash business
13 expenses?

14 A. I asked Dr. Booth if he, since our prior interview,
15 if he had considered cash business expenses, if there
16 were any additional ones, and he said no, just the
17 expenses that were already reported.

18 Q. So you didn't expect any other credits, isn't that
19 what you are saying?

20 A. His cash expense would not be a credit to Dr. Booth.

21 Q. Well, okay, but at any rate he didn't get any, isn't
22 that right?

23 A. He didn't say he had any more than what he had already
24 told me.

25 Q. All right, so those were in the records you already

M. A. Pasquarella, for Government, Cross.

- 1 had in your possession, is that right?
- 2 A. Yes, sir.
- 3 Q. Did you find that those records were substantially
- 4 correct?
- 5 A. I did not proceed that far into it, into the case.
- 6 Q. There is one reference Mr. Burns made about personal
- 7 expenses paid in cash and that these are the language
- 8 of the memorandum, I think your response was a little
- 9 different, "Dr. Booth agreed with our estimates". In
- 10 other words, did you make the estimate of his personal
- 11 expenses and he said, "That's about right", or exactly
- 12 what happened in that regard?
- 13 A. I remember asking him about personal expenses that he
- 14 would have paid in cash and he said he really didn't
- 15 know, you know, what the total amount was, so we
- 16 broke it down. I said, "Would you say it is" whatever
- 17 figures I may have used there.
- 18 Q. He agreed with your estimate, though?
- 19 A. Right, he did.
- 20 Q. Which bank deposit analysis did you discuss with him?
- 21 A. Which one?
- 22 Q. Yes.
- 23 A. I am sure that it was a preliminary one, one that we
- 24 had made.
- 25 Q. Do you have that one?

M. A. Pasquarella, for Government, Cross.

- 1 A. No, I don't have it. It probably was the one that
2 Mr. Luke had had prepared based on, - with his
3 referral. I don't know.
- 4 Q. You don't know which?
- 5 A. I don't know.
- 6 Q. You don't know which analysis you were using at that
7 time?
- 8 A. Specifically, no.
- 9 Q. Did Dr. Booth also tell you that again you have asked
10 him questions and he is trying to respond, isn't that
11 the way this is?
- 12 A. Yes.
- 13 Q. To your inquiries as to why there may be a difference
14 between your method of arriving at income, and his
15 method of arriving at income, isn't that the general
16 thrust?
- 17 A. Well, the general thrust was to explain this tentative
18 understatement of income based on the bank deposits
19 plus cash expenditures method of proving income.
- 20 Q. Yes, and didn't he say that maybe somebody, - some of
21 these organizations had paid him but had failed to
22 give him a 1099?
- 23 A. No. What he said was that maybe some of these organiza-
24 tions had paid him more money than what was indicated
25 on the 1099.

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WESTERN DISTRICT OF NEW YORK

M. A. Pasquarella, for Government, Cross.

- 1 Q. And if I were to tell you that a witness testified in
2 this court the other day and stated in fact that a
3 1099 was not correct that had been sent out to the
4 doctor, did not correspond with the checks paid to
5 him, and specifically Blue Shield, would you say that
6 that is possible?
- 7 A. It is possible for Blue Shield to make an error?
- 8 Q. Yes.
- 9 A. Yes.
- 10 Q. And, in fact, did in one of these years or two or three
11 of these years?
- 12 A. I don't have any independent knowledge of that.
- 13 Q. But wouldn't that also cover in essence the situation
14 where somebody normally would send him a 1099 but in
15 a particular instance hadn't sent him a 1099?
- 16 A. I'm sorry. I didn't follow your question, Mr. Fein.
- 17 Q. Wouldn't this statement by Dr. Booth also encompass a
18 situation in which a business, a firm normally would
19 send out a 1099 but in this particular year maybe did
20 not send out a 1099?
- 21 A. I don't know. I can't answer that. I don't know what
22 Dr. Booth meant.
- 23 Q. Well, you said somebody may have made a mistaken and
24 he may not be aware of it because he reported only the
25 amount on the 1099?

M. A. Pasquarella, for Government, Cross.

1 A. That's correct.

2 Q. So if he didn't get a 1099, he would have a mistake,
3 wouldn't he, compared to your way of doing things?

4 A. Well, you know, if he didn't get the 1099, not that he
5 wouldn't be aware of the money he received because he
6 received the checks during the year. He might not be
7 aware of it. He received the checks. He might not
8 be aware of the specific total at that particular time
9 but he received the checks during the year.

10 Q. Didn't he say that, - wasn't he trying to satisfy you
11 and himself that maybe there were errors by checks
12 being deposited by him in his account for which he
13 didn't have a 1099?

14

15 MR. BURNS: Your Honor. I object. Mr. Pasquarella
16 said he cannot answer as to what Dr.
17 Booth was trying or not trying to do.
18 He is just stating what this conversation
19 was.

20

21 BY MR. FEIN:

22 Q. All right, did you --

23

24 THE COURT: The question is withdrawn. Put
25 another question, please.

M. A. Pasquarella, for Government, Cross.

1 BY MR. FEIN:

2 Q. Did you receive all of the individual checks issued
3 to Dr. Booth?

4 A. I know that I requested them. Whether I received every
5 single one or whether they were finally delivered to
6 Special Agent Ciesla I do not remember. I know I
7 requested them. Whether I got every single one of them
8 I don't know.

9 Q. You said to him that would advise him if there were
10 any discrepancies, didn't you?

11 A. Yes, I did say that.

12 Q. Well, did you?

13 A. I never talked to Dr. Booth after this conference.

14 Q. When you were working with the bank deposit analysis
15 of Revenue Agent Luke's, - that's the one you were
16 working with, is that right, the one that is attached
17 to Government Exhibit C-24, - Court Exhibit C-24,
18 the Form 2797?

19 A. This is the initial bank deposit analysis that I was
20 working with, yes.

21 Q. Okay. Show me on 1968 where doctor was given credit
22 for the cash on hand of \$13,000?

23 A. I didn't prepare this schedule. Are you looking for
24 those actual words?

25 Q. I am looking for the \$13,000 credit that he got because

M. A. Pasquarella, for Government, Cross.

1 Luke believed that he had the \$13,000 in cash on hand.

2 A. I don't know what Mr. Luke believed. Let me check it
3 over.

4 Q. All right.

5 A. There is no credit listed as credit for cash on hand.

6 Q. And you were comparing a statement, - this is the
7 statement that you used to challenge, to accuse him of
8 an understatement, isn't that right?

9 A. I don't follow the question, Mr. Fein.

10 Q. Wasn't this the basis for you being in the audit, that
11 he had, in fact, understated his income by \$24,000?

12 A. At that time I did not know that he, in fact, understated
13 his income. I was there to determine --

14

15 THE COURT: I know that, but looking back now,
16 looking at everything available, all
17 the reports, and knowing how the
18 Internal Revenue System works in its
19 investigation --

20 THE WITNESS: Yes, your Honor.

21 THE COURT: Does that appear now to be in
22 hindsight a correct analysis? The
23 reason you were called in was that there
24 was this discrepancy that Mr. Fein is
25 describing.

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OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

M. A. Pasquarella, for Government, Cross.

1 THE WITNESS: That is true. That is the reason
2 why and no credit was given for cash
3 on hand.

4 BY MR. FEIN:

5 Q That's right.

6 A Right.

7 Q So all of this palaver actually didn't mean anything,
8 did it, because you had actually already ignored the
9 thirteen thousand, you knew about it, that he had made
10 this statement and you had ignored it.

11 A I don't follow you, Mr. Fein.

12 Q You don't?

13 A I don't.

14

15 THE COURT: Why not ask a question, Mr. Fein.

16 MR. FEIN: All right.

17 THE COURT: You make statements.

18

19 BY MR. FEIN:

20 Q All right. I will do that, your Honor. I show you
21 Mr. Luke's Schedule 2 which concerns itself with the
22 year 1968. You had studied this before you went out
23 to interview the doctor, didn't you?

24 A Yes, I did.

25 Q So you were familiar with it?

M. A. Pasquarella, for Government, Re-direct.

1 A. Yes.

2 Q. And in the body of the report Mr. Luke has a reference
3 to the fact that that doctor told him about \$13,000
4 and that he wasn't going to give him credit for it.

5 A. He didn't say whether he would give him credit. He said
6 it appears unreasonable that the taxpayer would have --

7 Q. Well, did he give him credit for it on this schedule?

8 A. No. There is no credit for cash on hand.

9 Q. He didn't give him credit, right. Just one final
10 question or two maybe. You started the interview, -
11 you read Doctor his rights on the initial interview.
12 Did you read his rights to him on February 17th?

13 A. No, I did not.

14 Q. What is the procedure, what is the standard procedure?

15 A. It is not necessary after the initial interview.

16 Q. Now, Mr. Pasquarella, did you testify before the grand
17 jury?

18 A. No, I did not.

19

20 MR. FEIN: I have no further questions.

21

22 REDIRECT EXAMINATION BY MR. BURNS:

23 Q. Mr. Pasquarella, after Dr. Booth told you that he had
24 cash on hand in the amount of \$13,000 or so, did you,
25 in fact, check to see if he did deposit this cash or

M. A. Pasquarella, for Government, Re-direct.

1 an amount similar to this was deposited in cash in his
2 accounts in 1968?

3 A. Yes, I did. Revenue Agent Luke and I went to Marine
4 Midland Bank in Lewiston, New York and we pulled the
5 original deposit tickets for the year 1968 that were
6 maintained by the bank and we analyzed every one and
7 there was not ten cents in cash deposited throughout
8 the whole year.

9 Q. When you say you analyzed it, what did you do?

10 A. We looked at the deposit ticket, and by looking at the
11 deposit ticket, you can see whether coin, currency or
12 checks were deposited and every single deposit made by
13 the doctor were, - was a check. Only checks were
14 deposited to his checking account and no cash whatsoever.

15 Q. Mr. Pasquarella, would you look at Government Exhibit
16 28, please. Are these the deposit tickets you are
17 speaking about?

18 A. Yes, they are.

19 Q. Mr. Pasquarella, in a bank deposit analysis how are
20 cash expenditures treated?

21 A. Cash expenditures are added to the total deposits made
22 to any checking or savings account.

23 Q. For what purpose?

24 A. To arrive at the total income received. The total
25 deposits are added up. That would represent after you

M. A. Pasquarella, for Government, Re-direct.

1 have considered the necessary adjustments, the income
2 received by that person for that year. Then you would
3 add any cash expenditure because that would be money
4 that he had earned but that he did not put into his
5 accounts. He spent cash money for whatever the case
6 may be, personal expenses, any nature.

7 Q. What was the purpose for your asking Dr. Booth what his
8 cash expenses were?

9 A. His cash personal expenses?

10 Q. Well, business or personal expenses.

11 A. Well, because they are part and parcel of the bank
12 deposit plus cash expenditures method of proving taxable
13 income.
14

15 MR. BURNS: I have no further questions.

16 MR. FEIN: No questions.

17 THE COURT: Next witness, please.

18 MR. BURNS: Richard Pelland.
19

20 * * * * *

Proceedings, February 4, 1976.
D. P. Ciesla, for Government, Direct.

1 PROCEEDINGS: February 4, 1976, 2:00 p.m.

2 APPEARANCES: As before noted.

3

4 (Defendant present.)

5 (Jury present.)

6

7 THE COURT: Mr. Burns, when you are ready.

8 MR. BURNS: Yes. The Government calls David
9 Ciesla.

10

11

* * * * *

12

13 D A V I D P. C I E S L A (115 High Ledge Drive, Eggerts-
14 ville, New York), a witness called by and in behalf of the
15 Government, having been first duly sworn, was examined and
16 testified as follows:

17

18 DIRECT EXAMINATION BY MR. BURNS:

19

20 MR. BURNS: Your Honor, excuse me. Mr. Fein
21 and I have agreed we will read the
22 stipulation we have previously entered
23 into at this time, so with the Court's
24 permission --

25 THE COURT: Very well.

D. P. Ciesla, for Government, Direct.

1 MR. BURNS:

"It is hereby stipulated and agreed

2 by and between the United States of
3 America and the defendant, Clayburn C.
4 Booth, that 247 checks were issued by
5 or on behalf of the persons whose
6 testimony was previously agreed to by
7 the parties and read in evidence to the
8 jury. These checks were made payable
9 to the defendant and represented payments
10 to him for the items specified in the
11 aforesaid stipulations. All of these
12 checks were deposited to the checking
13 account of Clayburn C. Booth, Account
14 Number 832-72157-3 at the Marine Midland
15 Bank-Western." That concludes the
16 stipulation.

17 THE COURT:

All right.

18
19 BY MR. BURNS:

20 Q. Mr. Ciesla, where are you employed?

21 A. At the Internal Revenue Service as a special agent with
22 the Intelligence Division.

23 Q. And how long have you been employed by the Internal
24 Revenue Service?

25 A. Since August of 1969.

D. P. Ciesla, for Government, Direct.

1 Q. And did you start off as a special agent?

2 A. Yes, sir.

3 Q. What was your educational background before you joined
4 the Internal Revenue Service?

5 A. Well, in 1966 I graduated from Alliance College with
6 a Bachelor's Degree in Accounting, or excuse me,
7 Business Administration, and then in 1967 I graduated
8 from Northeastern University with a Master's Degree
9 in Accounting.

10 Q. And did you join the Internal Revenue Service after
11 college, immediately after college?

12 A. No, sir. I worked for New York State as a tax auditor
13 until August of 1969.

14 Q. And what were your duties as a, - what auditor?

15 A. State tax auditor.

16 Q. And what were your duties as a State tax auditor?

17 A. Well, I audited employers' records for their unemployment
18 tax records.

19 Q. Now, could you tell the ladies and gentlemen of the jury
20 the duties and functions of a special agent?

21 A. Our basic function is to investigate for possible
22 criminal violations of the Internal Revenue laws.

23 Q. And what training have you had as a special agent?

24 A. Since I became a special agent I attended three
25 Government schools. The first one was basic income tax

D. P. Ciesla, for Government, Direct.

1 school. Then we attended Treasury Law Enforcement
2 School and Special Agents Basic Training.

3 Q. And what courses were given at the basic income tax
4 school?

5 A. We learned the basic tax laws and regulations relating
6 to individuals, partnerships and corporate taxpayers.

7 Q. And what courses were given at the Treasury Law
8 Enforcement School?

9 A. At that school we learned the basic rules of Federal
10 evidence, the Federal court procedures, how to conduct
11 general investigation, what evidence we have to gather
12 and how to interview people and write reports.

13 Q. And did you receive any further training after that
14 school?

15 A. Yes, sir. I attended the special agents basic school.

16 Q. Is this also an IRS school?

17 A. Yes, sir.

18 Q. And what did that consist of?

19 A. We learned basically what was expected of us as special
20 agents. We learned the laws that we were expected to
21 investigate, how to conduct an investigation, how to
22 interview people, how to write reports and the manners,
23 the types of proof we would use to compute income.

24 Q. And where were you assigned after the special agents
25 course?

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- 1 A. Buffalo, New York.
- 2 Q. The field office here in Buffalo?
- 3 A. Yes, sir.
- 4 Q. Were you at that time assigned to the Intelligence
5 Division?
- 6 A. Yes, sir.
- 7 Q. And approximately when was that?
- 8 A. Would have been probably May of 1970.
- 9 Q. And what assignments did you receive, what types of
10 assignments did you receive as a special agent?
- 11 A. I was assigned to investigate the tax liability of
12 individuals and corporations to try and determine whether
13 there were any violations of the Internal Revenue laws.
- 14 Q. When you first were assigned to this office, did you
15 assist any other agents, any other special agents in
16 their investigations?
- 17 A. Yes, sir. That was a form of informal training where
18 the more senior special agents were conducting their
19 own investigations and we would assist them to learn
20 our job a little better.
- 21 Q. Were you at some point of time assigned to investigate
22 the Federal income tax returns for Clayburn C. and
23 Grete Booth for the years 1966, 1967 and 1968?
- 24 A. Yes, sir, on, I think it was, January 11, 1971.
- 25 Q. What did you do when you first received that assignment?

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1 A. Well, what I did was I familiarized myself with what
2 Mr. Pasquarella and Mr. Luke had done up to that time.

3 Q. Were you replacing Mr. Pasquarella?

4 A. Yes, sir.

5 Q. I'm sorry. What did you do?

6 A. Then I looked through whatever records were available
7 at the time, the tax returns Dr. Booth had filed, the
8 records that Dr. Booth had submitted to Mr. Luke, any
9 computations Mr. Luke and Mr. Pasquarella had made, and
10 any other records that they obtained from third parties.

11 Q. Now, in conducting your investigation, did you utilize
12 any particular method or theory?

13 A. Well, I decided to compute Dr. Booth's income using
14 what we call the cash, - bank deposit and cash expendi-
15 tures method of proving income.

16 Q. What were your reasons for choosing that method?

17 A. Well, the records which Dr. Booth submitted did not
18 fully list the business receipts he had so we had to
19 rely on another method and I chose the bank deposit
20 method, because Dr. Booth did indicate that he deposited
21 all of the checks received in his business.

22 Q. And what is the purpose of the bank deposits cash
23 expenditure method?

24 A. Well, it is a way of proving a person's income by
25 analyzing the deposits to his accounts, the checks

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1 drawn on these accounts and any cash transactions he
2 entered into.

3 Q. For what purpose?

4 A. To determine his correct income.

5 Q. Now, during the course of your investigation, did you
6 at anytime interview Dr. Booth?

7 A. Yes. I interviewed Dr. Booth on October 12, 1971 at the
8 Internal Revenue office in Buffalo, New York.

9 Q. And who was present at that interview?

10 A. Well, besides Dr. Booth and myself, Mr. Fein was
11 present and Mr. Luke.

12 Q. Harold Fein?

13 A. Yes, sir.

14 Q. All right. Did you know Harold Fein prior to the
15 interview on October 12, '71?

16 A. Yes, sir, he was Dr. Booth's attorney of record and I
17 had several meetings and telephone conversations with
18 Mr. Fein.

19 Q. Now, how did you begin the interview that day with
20 Dr. Booth?

21 A. I introduced myself to Dr. Booth as a special agent
22 with the Intelligence Division of the Internal Revenue
23 Service. I then showed him my credentials which he
24 examined.

25 Q. And do you see Dr. Booth in the courtroom today?

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- 1 A. Yes, sir.
- 2 Q. Would you point him out, please.
- 3 A. He is the gentleman at the defendant's table with the
- 4 red tie.
- 5 Q. All right. Now, did you say anything to Dr. Booth
- 6 before beginning your substantive interview with him?
- 7 A. Yes, sir. I reminded Dr. Booth that he had the right
- 8 to remain silent; that anything he did say to us could
- 9 be possibly used against him in any criminal proceedings
- 10 which might be undertaken.
- 11 Q. And did you begin your interview thereafter?
- 12 A. Well, at that point in the interview Mr. Fein told us
- 13 that there was certain 1967 and 1968 records which
- 14 Dr. Booth did not give us. He explained that Dr. Booth
- 15 had a fire in his office and some of these records were
- 16 lost in the fire and that this is the reason we didn't
- 17 have the records. He said Dr. Booth was not trying to
- 18 withhold any records from us.
- 19 Q. Well, after that statement, did you then begin your
- 20 interview of Dr. Booth?
- 21 A. Well, what I did is I told Dr. Booth that Mr. Luke was
- 22 assigned to audit his 1967 and 1968 tax returns and
- 23 that as a result of the audit he determined that there
- 24 may be a substantial understatement of his income in
- 25 those two years and because of that he referred this

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1 audit, these audit results to the Intelligence Division
2 and an investigation was assigned to Mr. Pasquarella
3 and after Mr. Pasquarella had talked to Dr. Booth, Mr.
4 Pasquarella expanded the investigation to include 1966
5 because it appeared that there was also a substantial
6 understatement of income that year.

7 Q. And subsequent to that, did the interview begin?

8 A. Well, I then told Dr. Booth that after it was assigned
9 to me I was attempting to do various things to prove
10 the amount of the understatement and why there was an
11 understatement.

12 Q. And did you tell Dr. Booth, - did you mention to Dr.
13 Booth that you wanted to discuss the matter with him?

14 A. Yes, sir.

15 Q. And what did he say?

16 A. Well, I told Dr. Booth that I was going to ask him some
17 questions but I then asked him if he wanted to say
18 anything before I did ask him any questions.

19 Q. And did he make any response?

20 A. Yes, sir.

21 Q. What did he say?

22 A. Dr. Booth indicated that until he had talked to Mr.
23 Fein several weeks before this interview, he had no
24 idea what the Internal Revenue Service was looking for.
25 He didn't know if we wanted something specific or

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1 whether we were just trying to harass him and --

2 Q. After Dr. Booth made that statement, did you then ask
3 him some questions?

4 A. Yes, sir.

5 Q. And go ahead, what did you ask him?

6 A. Well, Dr. Booth indicated that he did not report as
7 income the checks which he received for which he did
8 not receive a 1099 from his patients and that he now
9 knows why, - he then knew why the Internal Revenue
10 Service wanted, - was investigating him.

11 Q. And then did you discuss, did you ask him why he did
12 not report these checks as income?

13 A. I asked Dr. Booth why he recorded the cash he received
14 in his office but not the checks and Dr. Booth said
15 that it never occurred to him that the checks he
16 received in his practice should be included in the
17 office receipts. He said that once these checks were
18 deposited, he assumed they would be reported.

19 Q. Do you know, incidentally, Mr. Ciesla, how many checks
20 were deposited to Dr. Booth's accounts for the years
21 1966, 1967 and 1968?

22 A. Roughly about 2,200 checks.

23 Q. Did you, during your interview, Mr. Ciesla, show Dr.
24 Booth what has been marked Government's Exhibit 1?

25 A. Yes, sir. Government Exhibit 1 is Dr. Booth's 1966

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1 Income Tax Return. I showed the original return to
2 Dr. Booth. He examined it and identified his signature
3 on the return and said that it was in fact his 1966
4 Income Tax Return.

5 Q. And did you also show him Government Exhibits 2 and 3?

6 A. No, sir, I didn't at the time because Mr. Pasquarella
7 had previously done that.

8 Q. Did he indicate whether he had filed Government Exhibit 1?

9 A. Yes, sir. He said that the returns were signed in
10 Niagara Falls, New York and mailed to the Internal
11 Revenue Service from Niagara Falls, New York.

12 Q. Mr. Ciesla, did you ask Dr. Booth any questions
13 regarding the cash he said he may have accumulated over
14 a period of years?

15 A. Well, I told Dr. Booth that he had mentioned to Mr.
16 Pasquarella and Mr. Luke that as of January 1, 1967 he
17 had accumulated \$6,000 of cash and I asked him what, -
18 how much cash he had accumulated as of January 1st of
19 1966.

20 Q. And did Dr. Booth respond to that?

21 A. Dr. Booth said that he doesn't, - he didn't really know
22 for sure but it may have been about \$2,000. Did you
23 at anytime define the term "cash hoard" for Dr. Booth?

24 A. No, sir.

25 Q. Did you discuss with Dr. Booth the amount of cash he

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1 used for living expenses during the years under
2 investigation?

3 A. Yes, sir. I asked Dr. Booth what, - how much cash he
4 used for personal living expenses in 1966 and Dr. Booth
5 said that he really did not know what these amounts
6 were. He indicated that Mr. Pasquarella and Mr. Luke
7 had quoted some amounts to him for 1967 and 1968 which
8 he agreed to at the time, but even these he wasn't
9 sure of. Mr. Fein then mentioned that Dr. Booth's
10 living expenses in '67 and 1968 could not have exceeded
11 the cash he reported as his income for those two years.

12 Q. The cash that he reported on his income tax returns?

13 A. Yes, sir, and Dr. Booth agreed with that. I then
14 mentioned to Dr. Booth that his cash office receipts
15 in 1966 were something over \$4,000 and I asked him,
16 based on this figure, could he estimate what, - how
17 much of that he used for cash living expenses in 1966
18 and he said that it may have been about \$2,000.

19 Q. Did you ask Dr. Booth any questions regarding the
20 records he or Mr. Lonardo may have kept of office
21 receipts and expenses?

22 A. I asked Dr. Booth what services Mr. Lonardo performed
23 for him in 1966 and Dr. Booth said that he did the
24 same thing for him in '66 as he did in 1967 and 1968,
25 he prepared his tax returns and he kept a record of his

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1 income, or excuse me, a record of his expenses.

2 Q. Did he, - was there any discussion regarding any records
3 kept of the receipts?

4 A. Well, Dr. Booth indicated that the only records of any
5 receipts he kept were the slips of paper on which he
6 recorded the cash he took in in his office and that
7 he kept no record of the checks he received in those
8 years.

9 Q. Did Dr. Booth provide you with the names of any of his
10 employees?

11 A. The only employee he mentioned was his wife, Mrs. Booth,
12 and he said in those years she did not receive a salary.

13 Q. Was there any conversation between you and Dr. Booth
14 regarding the checks that he had received during the
15 course of his practice?

16 A. I am sorry.

17 Q. As to what he did with any checks he received?

18 A. Okay. Dr. Booth said that when they received checks,
19 they were kept in a drawer in the secretary's desk in
20 his office and usually at the end of a business day,
21 either he or his wife would transfer these checks to a
22 drawer, a dresser drawer in their home and these checks
23 would stay there until Dr. Booth decided that he needed
24 to make a deposit, at which time Dr. Booth removed the
25 checks from the dresser drawer and listed these checks

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1 on a deposit ticket by bank code and amount, or he
2 would have one of his employees do this.

3 Q. Did he tell you if he kept any records of these checks?

4 A. He said there was no records of any checks which he
5 received in those years.

6 Q. Now, during the course of your interview did you at
7 anytime show him copies of any deposit tickets to his
8 checking account?

9 A. I showed him copies of, - I showed him copies of the
10 deposits of three deposits that he made in 1966 dated,
11 I believe, February 2, 1966; February 25th and March 7th
12 of 1966. Dr. Booth examined these copies and said
13 that he prepared the originals.

14 Q. Did he tell you how deposits were made to his account?

15 A. Well, he indicated that they were, - the checks were
16 in the dresser drawer and that he would decide when to
17 make a deposit and then at the time he decided, the checks
18 would be removed from the drawer and they would prepare
19 deposit tickets and take these to the bank.

20 Q. Mr. Ciesla, would you look at Government Exhibit 42,
21 please. Now, did you discuss this letter with Dr. Booth?

22 A. Yes, sir. At this interview I showed this letter to
23 Dr. Booth and Mr. Fein and they both examined the
24 letter and Mr. Fein indicated that there was a mistake
25 in the letter where it said "I deposited \$6,000, then

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1 \$7,000 to my checking account". Mr. Fein indicated
2 that it should have been "savings account" and Dr. Booth
3 examined it and he agreed with what Mr. Fein had said.

4 Q. Do the savings account records indicate the deposit of
5 six thousand and seven thousand was, in fact, made to
6 the savings account rather than the checking account?

7 A. That's correct.

8 Q. And did Dr. Booth tell you why he wrote this letter?

9 A. Dr. Booth indicated that Mr. Luke had requested
10 some records from him and Dr. Booth brought these
11 records to the Niagara Falls Internal Revenue office
12 and Mr. Luke wasn't there at the time so Dr. Booth left
13 these records and he wrote this letter to Mr. Luke.
14 In the letter he tried to explain what Mr. Luke had
15 asked him.

16 Q. Did he offer any further explanation as to some of the
17 statements he made in that letter other than the one
18 you have already identified, - that is, that the
19 deposits were made to the savings account rather than
20 the checking account?

21 A. Yes. Dr. Booth indicated that what he meant in the
22 letter was that he, - that the specific moneys which
23 he had put into the savings account in 1968 were not
24 moneys which he had been saving since he was in the
25 army but he only meant that he was saving money since

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1 he was in the army.

2 Q. Mr. Ciesla, let me show you Government Exhibits 43
3 through 47. Have you seen these exhibits before?

4 A. Yes, sir. These are copies of Mr. Lonardo's work papers
5 which Dr. Booth had given to Mr. Luke.

6 Q. And did you do anything with those exhibits during
7 your interview of Dr. Booth on October 17, 1971?

8 A. Yes, sir, on the interview on October 12th.

9 Q. I am sorry, October 12th.

10 A. I showed these sheets to Dr. Booth and I asked him to
11 examine them.

12 Q. Did he do so?

13 A. Yes, sir. He examined them and he said that they are
14 copies of the work papers that Mr. Lonardo had given
15 him.

16 Q. Now, can you identify Government Exhibit 47?

17 A. Yes, sir. That is a copy again of the work papers
18 which Dr. Booth had given to Mr. Luke and this particular
19 sheet shows the income Dr. Booth had reported in 1965,
20 1966, '67 and '68 by the various sources.

21 Q. Did you do anything with that exhibit during your
22 interview with Dr. Booth?

23 A. Yes, sir. I asked Dr. Booth what the word "unavail",
24 it appears like an abbreviation in the 1968 income
25 column, for the so-called Medicare Part B income meant

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1 and he indicated that he did not receive Form 1099 that
2 year from Blue Shield of Western New York and Mr.
3 Lonardo had asked him about it so he called up Blue
4 Shield.

5 Q. Who called Blue Shield?

6 A. Dr. Booth said he called up Blue Shield to find out
7 why he did not receive a 1099 that year and he told
8 me that he had talked to several people at Blue Shield.
9 One of the persons he talked to indicated that Blue
10 Shield did not issue Forms 1099 that year for the
11 Medicare Part B payments and another person he talked
12 to said that the moneys he received for Medicare Part B
13 would have been included in the regular Form 1099 that
14 Blue Shield sent him that year.

15 Q. Did he tell you who he spoke with at Blue Shield?

16 A. No, sir, didn't know, I believe.

17 Q. Did he tell you, - did he give you any other information
18 regarding contacts he or anyone else may have made with
19 Blue Shield regarding this Medicare 1099?

20 A. No, sir.

21 Q. Now, during the course of your interview with Dr. Booth
22 did he provide you with any information regarding his
23 personal background?

24 A. Well, Dr. Booth told me that in 1960 he graduated with
25 a medical degree from the University of Heidelberg in

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1 Germany and after he graduated from that school, he and
2 his wife moved to Niagara Falls, New York and Dr. Booth
3 started working for a hospital in Niagara Falls as an
4 intern and he continued working at the hospital until
5 1963 when he began to, - he began his own practice of
6 medicine.

7 Q. Now, at the, - at anytime during the interview did
8 Dr. Booth or Mr. Fein tell you what Dr. Booth wanted to
9 do regarding this tax problem?

10 A. Well, Mr. Fein indicated that regardless of the outcome
11 of my investigation, Dr. Booth intended to pay the
12 Government all the taxes that he owed and then Dr. Booth
13 indicated that he was now aware that he was not
14 reporting all of his income in those years and that he
15 intended to pay, - he would like to settle the matter
16 and pay the Government whatever he owed. He said he
17 felt obligated to do this.

18 Q. Subsequent to your interview of Dr. Booth on October 12
19 of '71, did you continue your investigation?

20 A. Yes, sir.

21 Q. And what did you, - how did you continue your investiga-
22 tion?

23 A. Well, what I was doing is I was attempting to arrive
24 at Dr. Booth's correct taxable income for those three
25 years.

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- 1 Q. And how did you attempt to do that?
- 2 A. Well, I was analyzing the records that Dr. Booth had
- 3 given us and the records we had received from other
- 4 sources. The records Dr. Booth gave us were his
- 5 cancelled checks, his check stubs and the accountant's
- 6 work papers for 1967 and 1968.
- 7 Q. Mr. Ciesla, let me show you Government Exhibits 22, 23,
- 8 24 and 25. Will you look at those exhibits, please,
- 9 and do you recognize them?
- 10 A. Yes, sir. These are copies of Dr. Booth's ledger
- 11 sheets from his checking account at Marine Midland
- 12 Bank.
- 13 Q. And did you use these in your investigation?
- 14 A. Yes, sir.
- 15 Q. Now, also would you look at Government Exhibits 26,
- 16 27 and 28?
- 17 A. These are copies of deposit tickets which Dr. Booth
- 18 had used in '66, '67 and '68 to put money into his
- 19 checking account.
- 20 Q. And did you also review his savings account records?
- 21 A. Yes, sir. We obtained the ledger sheets for his
- 22 savings account and the deposit tickets to this account.
- 23 Q. All right. Now, did you review any items of deposit
- 24 that went into these checking accounts?
- 25 A. During the investigation we found out that Marine

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1 Midland Bank in these three years microfilmed some of
2 the checks which their customers deposited to their
3 accounts. We obtained microfilm copies of whatever
4 checks they did microfilm to Dr. Booth's account for
5 these three years and for one day in 1969.

6 Q. And what did you do with these checks, these items of
7 deposit?

8 A. We looked, - I looked at every check, every copy of
9 every check and I wanted to see what date was on these
10 particular checks.

11 Q. For what reason?

12 A. Well, some of the deposits Dr. Booth made in a year,
13 in any one of these three years contained checks that
14 he had received in a prior year.

15 Q. Did that make any difference as far as your investigation
16 was concerned?

17 A. Yes, sir. I was interested in the total checks Dr.
18 Booth had received in each particular year, because
19 Dr. Booth is what is called a cash basis taxpayer which
20 means that the moneys he earns in his practice are
21 taxable when he receives the money and not when they
22 would be deposited into his accounts.

23 Q. Now, did you then make copies of these checks that
24 were deposited in different years?

25 A. We obtained copies from the microfilm which the bank

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1 had.

2 Q. All right. Would you look, please, at Exhibits 29?

3 A. Exhibit 29 are the deposit tickets to Dr. Booth's
4 account on March 5, 1969.

5 Q. Was that the first deposit in the year 1969?

6 A. That's the first deposit that Dr. Booth made that year.

7 Q. All right. Would you also look at Government Exhibit
8 36 and tell me what that is?

9 A. These are the print-outs from the bank microfilm of the
10 checks that were deposited to Dr. Booth's account on
11 February 2nd of 1966 which was the first deposit he
12 made in 1966.

13 Q. All right, and would you look at Government Exhibit 37,
14 please, and tell me what that is?

15 A. These are the copies from the bank, the microfilm copies
16 of the checks which Dr. Booth deposited on January 30th
17 of 1967 which was Dr. Booth's first deposit of that
18 year.

19 Q. And would you look, please, at Government Exhibit 38
20 and identify it if you could.

21 A. These are the checks which the bank copied for deposits
22 Dr. Booth made on January 15th of 1968 which again was
23 a first deposit of the year.

24 Q. And finally, would you look at Government Exhibit 39?

25 A. These are the bank microfilm of the checks which

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1 Dr. Booth deposited on March 5th of 1969, again the first
2 deposit of the year for Dr. Booth.

3 Q. Now, Mr. Ciesla, after reviewing these records and the
4 other records you have mentioned, what did you do at
5 the conclusion of your investigation?

6 A. I am sorry, Mr. Burns?

7 Q. Did you at some time prepare a schedule of some kind
8 analyzing the records you just described?

9 A. Relating to these checks which were deposited?

10 Q. Yes, that's correct.

11 A. Yes, sir. I listed all the copies of these checks
12 which we had available and examined them for the date,
13 the date on these checks and if the check was dated in
14 a year prior to on which it was deposited, I would
15 deduct these amounts from the deposits in the year
16 they were made and add them to the deposits of the
17 prior year.

18 Q. Did you at the conclusion of your investigation prepare
19 a computation of corrected taxable income in the bank
20 deposits and cash expenditures method?

21 A. Yes, sir.

22 Q. Would you describe that bank deposits and cash expendi-
23 tures method?

24 A. As I, - as it was shown on my computation?

25 Q. Well, how did you prepare the analysis, what did you

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1 do?

2 A. Well, what I did was I analyzed again all of the
3 records which Dr. Booth had submitted, the checks, the
4 check stubs, the accountant's work papers and the
5 records, the bank records which we obtained from Marine
6 Trust Company, and I analyzed these and I computed his
7 income from it.

8 Q. All right, and was this based upon all the records that
9 you have mentioned, you testified to so far today?

10 A. Yes, sir.

11 Q. All right. Would you look, please, Mr. Ciesla, at what
12 has been marked Government Exhibit 48. Would you tell
13 me what that is?

14 A. This is my computation of Dr. Booth's correct taxable
15 income for the years 1966, 1967 and 1968 using the
16 bank deposit and cash expenditures method.

17
18 MR. BURNS: All right. At this time, your
19 Honor, I offer in evidence Government
20 Exhibit 48.

21 THE COURT: Mr. Fein.

22 MR. FEIN: I have no objection.

23 MR. BURNS: Your Honor, there is some material
24 on here which I intend to excise off
25 which does not relate to the figures

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1 themselves but merely back-up informa-
2 tion. However, this is the original.

3 THE COURT: Why not make a copy and show the
4 copy to Mr. Fein. You do not object to
5 that, Mr. Fein?

6 MR. FEIN: No. That was our only statement.

7 MR. BURNS: Your Honor, may we approach the
8 bench?

9
10 (Side bar conference had off the
11 record between Court and counsel.)

12
13 THE COURT: Mr. Burns has asked permission to
14 give to the jury copies of Government
15 Exhibit 48 which is in evidence and it
16 is a computation of corrected taxable
17 income so the jurors can follow as the
18 witness testifies, and permission is
19 given. You may follow that course.

20 MR. BURNS: Thank you, your Honor. Mr. White
21 is not here, I don't think it was
22 marked in evidence.

23 THE COURT: It was offered and we will mark
24 it in evidence.
25

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(Government Exhibit Number 48
received in evidence.)

(Copies of Government Exhibit
Number 48 in evidence handed to each
individual member of the jury.)

BY MR. BURNS:

Q. Now, Mr. Ciesla, do you have that?

A. No, I do not.

THE COURT:

Mr. Burns, before we begin I guess
Mr. Ciesla needs a copy of his own to
help him and remember, ladies and
gentlemen, we have heard a lot of
testimony about the figures. These are,
as I understand it, something prepared
by Mr. Ciesla. We may have information
in the record now which he does not
have so that in thinking about this, you
should remember that you cannot make
up your mind about any problem here
until you have heard all of the testimony,
you have listened to the cross examina-
tion of Mr. Fein and whether or not the

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1 figures are accurate or not accurate,
2 that is finally for you to determine.
3 You do not have to just take this
4 because it is written down. That does
5 not mean that you have to take that
6 as accurate. You should very carefully
7 scrutinize the figures and where Mr.
8 Ciesla got the underlying information.
9

10 BY MR. BURNS:

11 Q. Now, Mr. Ciesla, would you tell us what Exhibit 48 is?

12 A. It is my computation of Dr. Booth's correct taxable
13 income for the years 1966, 1967 and 1968 using the
14 bank deposit and cash expenditures method.

15 Q. Now, what do all these computations and figures on the
16 first page of this exhibit represent?

17 A. I was at this, - on the first page I was trying to
18 determine what was Dr. Booth's income from his
19 private practice.

20 Q. And what did you use as a starting point?

21 A. The bank deposits that he made in each year.

22 Q. Did you, - well, all right, and what figure did you
23 use for the deposits, the bank deposits?

24 A. As far as the checking account?

25 Q. Yes, the checking account first.

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- 1 A. I used, - the amounts I have, - should I read the
2 amounts?
- 3 Q. Yes, go ahead.
- 4 A. The amounts I have for deposits to checking account
5 83272157-3 of fifty-five thousand three ninety-five
6 seventy-eight in 1966, seventy-two thousand six seventy-
7 one nineteen in 1967 and eighty-two thousand four
8 fifty-two 0 nine in 1968.
- 9 Q. How did you arrive at these figures?
- 10 A. These figures are the actual checks that Dr. Booth
11 had, - did receive in the years 1966, 1967 and 1968.
- 12 Q. Does this, - do these figures represent the sum total
13 of all the deposits made in these calendar years?
- 14 A. No, sir.
- 15 Q. Did you make some adjustments to the sum total, did you
16 make some adjustment to these?
- 17 A. Yes, sir.
- 18 Q. The total of the checking account deposits? What were
19 these adjustments?
- 20 A. Based on the microfilm of the checks which Dr. Booth
21 had deposited on February 2nd, 1966 --
- 22 Q. That is Government's Exhibit 36?
- 23 A. Government's Exhibit 36, and Government's Exhibit 37
24 which were the checks deposited on January 30th, 1967,
25 the checks, - copies of the checks which were deposited

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1 on January 15th of 1968 and the copies of the checks
2 which were deposited on March 5th, 1969. The amount
3 I have for 1966, I took the total amount deposited to
4 that account in 1966 and then I deducted those checks
5 on Government's Exhibit 36 which were dated in 1965
6 because these checks were received, - dated in 1965
7 and were not income to Dr. Booth in 1966, so I deducted
8 these checks from the total deposits he made in 1966.

9 Q. Why did you say that they were not income to Dr. Booth
10 in 1966?

11 A. I mentioned previously that Dr. Booth is a cash basis
12 taxpayer which means that the moneys he earns in his
13 practice are taxable to him when he receives them and
14 not when he deposits them.

15 Q. After analyzing these items of deposit which are in
16 Exhibits 36, 37, 38 and 39, did you make adjustments
17 to the total deposits?

18 A. Yes, sir.

19 Q. And did you reduce these total deposits or make
20 adjustments for these so-called year-end deposits?

21 A. Yes, sir.

22 Q. All right, and what do these three figures at the top
23 of each column 1966, 1967 and 1968 represent?

24 A. The amount for 1966 is the total deposits Dr. Booth
25 made in 1966, less those deposits, - less those checks

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1 which were dated in 1965 which I deducted I then
2 added the checks which were deposited in 1967 but were
3 dated in 1966.

4 Q. And did you follow the same process with respect to
5 1967 and 1968 figures?

6 A. Yes, sir.

7 Q. What is the second figure, what is the second item on
8 this schedule?

9 A. Those amounts are the actual deposits to Dr. Booth's
10 checking account for the years 1966 and 1968 and 1967
11 he had no deposits to the savings account.

12 Q. All right, and after, - did you make any adjustments
13 to either figure in the savings account, '66 or '68?

14 A. No, sir.

15 Q. All right. What did you do with these two figures?
16 I am sorry, with the checking account figures and the
17 savings account figures?

18 A. I made a total of the two which would be considered
19 total deposits for each particular year.

20 Q. After you had arrived at some figure of total deposits,
21 what was the next step?

22 A. I added Dr. Booth's cash expenditures in each of the
23 years to the total deposits.

24 Q. What was your reason for doing that?

25 A. The bank deposit method and cash expenditures method,

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1 what you do is you total up the bank deposits and you
2 add the cash expenditures which would give you a total
3 amount that an individual would have available.

4 Q. All right, and how did you arrive at the figure of
5 \$2,102.83 for 1966?

6 A. That amount consisted of \$102.83 of business cash
7 expenditures which I found in the records Dr. Booth
8 had submitted. The difference is \$2,000 which Dr.
9 Booth indicated that he may have spent that much for
10 personal living expenses in that particular year.

11 Q. Did you accept his figure for that particular year?

12 A. Yes, sir.

13 Q. All right, and how did you arrive at the cash expenditure
14 figure for 1967?

15 A. In 1967 there were no cash deposits to either one of
16 Dr. Booth's checking account or his savings account so
17 the figure I have there is the cash office receipts
18 which Dr. Booth reported as income in that particular
19 year.

20 Q. Did you again accept Mr. Lonardo's or rather Dr. Booth's
21 figure and Mr. Lonardo's figure?

22 A. Yes, sir.

23 Q. All right, and how did you arrive at the figure for
24 cash expenditures in 1968?

25 A. Again in 1968 there were no cash deposits to either

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1 account so I took the amount that Dr. Booth had reported
2 as cash income in that year and considered that his
3 cash expenditures.

4 Q. After totaling the cash expenditures and the bank
5 deposits for each year, what did you do?

6 A. After we arrived at that particular total, we deducted
7 certain checks which Dr., - or certain moneys which
8 Dr. Booth had deposited in the three years were, -
9 which were either not income --

10 Q. Before you did that, did you add up the cash expenditures
11 and the bank deposits?

12 A. Yes, sir.

13 Q. And is that the total represented in Line 11?

14 A. Total deposits and cash expenditures, yes.

15 Q. For each of the three years, is that right?

16 A. Yes, sir.

17 Q. All right. After you arrived at the total, what was
18 the next step in the bank-deposit analysis?

19 A. I wanted to deduct moneys which were deposited which
20 were either income which he had reported on his tax
21 return somewhere other than as business income and I
22 wanted to deduct those checks and cash which were not
23 income at all to him in any of the three years.

24 Q. Why did you take out the items that might be income to
25 him at this point in the schedule?

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1 A. Well, I wanted to arrive at his net income from his
2 practice of medicine and these amounts were not reported
3 on his tax return as income from his business, but as
4 separate items.

5 Q. And were these subtractions to be included later on in
6 the schedule?

7 A. Later on after I arrived at his net income from his
8 medical practice, I added these amounts on which he
9 reported on his tax returns in those years.

10 Q. Now, Mr. Ciesla, would you tell me what this first item
11 is on Line 14, "Cash Available from Prior Years
12 Accumulation"?

13 A. If any of the deposits in 1966 were the result of
14 cash that Dr. Booth had from some prior year and he
15 deposited these amounts in 1966, they were not income
16 to him in 1966 so we would deduct this from the total
17 deposits in cash expenditures.

18 Q. How did you arrive at this figure \$2,674.83 for 1966?

19 A. Dr. Booth had deposited \$4,780 cash into his savings
20 account in 1966. I took that amount and added the
21 cash expenditures of twenty-one 0 two eighty-three
22 in 1966 and arrived at the amount of cash he had
23 available in 1966. Then what I did is I deducted the
24 amount of cash office receipts that were reported on
25 the accountant's work papers, the amount of cash

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1 Dr. Booth received in his practice that year. I
2 deducted that from the cash available during the year
3 and I arrived at a figure which is twenty-six seventy-
4 four eighty-three, which must have been cash he had
5 accumulated from a prior year.

6 Q. Would this not then be included in his taxable income
7 for 1966? Would that be excluded?

8 A. Yes.

9 Q. All right. Now, after arriving at that figure, what
10 other items did you deduct?

11 A. I deducted the net wages he received from Nuclear
12 Materials and Equipment Corporation during the three
13 years. These were the actual total of the check he
14 received from this company and deposited. This money
15 was reported as income by Dr. Booth but it was reported
16 as a wage and not as income from his business.

17 Q. Mr. Ciesla, would you look at this stipulation, - will
18 you look at this stipulation on testimony of Robert
19 Nicander of Atlantic-Richfield Oil Company relating
20 to Nuclear Materials and Equipment Corporation. Are
21 these the figures, - are the figures in the stipulation
22 the ones which you deducted out on your schedule?

23 A. Yes, sir.

24 Q. All right. What item is next?

25 A. Dr. Booth received payments from the New York Central

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1 Railroad and New York Central Railroad provided Dr.
2 Booth with a W-2 in 1966 and it was reported on his
3 tax return as wages, so I deducted the checks that New
4 York Central Railroad issued Dr. Booth in 1966.

5 Q. Were there any additional payments for the years 1967
6 or 1968 from the New York Central that you had to account
7 for?

8 A. No, sir.

9 Q. All right. Would you look at a stipulation, please, of
10 a Mr. Stiteler of the Penn Central Transportation
11 Company. Is that the item that you referred to as the
12 New York Central Railroad item?

13 A. Yes, sir.

14 Q. All right, go ahead.

15 A. In '67 and '68 Dr. Booth received payments from New York
16 Central Railroad but they don't enter into my computation
17 for those years because they did not provide him with
18 a W-2 Form in those years.

19 Q. So you disregarded them entirely?

20 A. At this point.

21 Q. All right. Now, what is the next item?

22 A. Dr. Booth received some compensation from John Hancock
23 Mutual Life Insurance Company. This again was reported
24 by Dr. Booth as a wage so it was deducted from the
25 deposits at this point.

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- 1 Q. Was this for just one of the calendar years?
- 2 A. Yes, it was. It was for 1966 and was for \$15 and he
3 received a W-2 for 1966 in that amount.
- 4 Q. All right. Now, what is the next item on this list?
- 5 A. It is interest income which he received from Falls
6 Budget Corporation and later Falls Resources Corporation
7 which he received by checks. This is interest income.
8 He received the checks and they were deposited into
9 his checking account and they were reported on his tax
10 returns in the three years as interest income and not
11 as business income.
- 12 Q. All right, and the next item, "Errors in deposit and
13 bad checks", what is that figure?
- 14 A. These amounts came from the bank statements, the checking
15 account bank statements for 1966, 1967 and 1968. They
16 were debits to the statements which means if Dr. Booth
17 made a deposit, the bank would record the amount that
18 was indicated on the deposit ticket. If they later
19 found that there was an error, they would deduct this
20 amount, or if Dr. Booth had received a bad check, they
21 would deduct this amount from his account.
- 22 Q. In your review of Dr. Booth's bank records, did you,
23 in fact, find there were some such errors in the deposits?
- 24 A. Yes, sir.
- 25 Q. And what did they total?

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1 A. They totaled \$123.40 in 1966; \$66.45 in 1967 and \$100.20
2 in 1968.

3 Q. Now, what is the next item on the schedule?

4 A. Insurance dividends from Metropolitan Life Insurance
5 Company. In each of the three years Metropolitan Life
6 Insurance Company sent Dr. Booth checks totaling \$58.40.
7 These represent non-taxable dividends which he received
8 and deposited into his account so they had to be
9 deducted from the total deposits and cash expenditures
10 because they were not income to Dr. Booth in those
11 years.

12 Q. And what is the next item on the list?

13 A. The refund of contributions to retirement plan. Mrs.
14 Booth apparently worked for some company and contributed
15 moneys to a retirement plan, and when she no longer
16 worked for the company, they reimbursed her for her
17 contributions into this plan. The moneys, - these
18 moneys were not, - they were moneys she had put into
19 the plan and therefore they were not taxable moneys,
20 so this check was deposited but it did not represent
21 taxable income so it was taken out.

22 Q. Were there other items of so-called non-income items
23 that you also deducted out?

24 A. Yes, sir. The next two items were reimbursements for
25 damage that was done to Dr. Booth's car and these moneys

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1 were not income to Dr. Booth. They were merely a
2 reimbursement of some work he had done on his automobile
3 to repair it.

4 Q. And are those reflected in Lines 25 and 26?

5 A. Yes, sir. They amount to \$625.25 and \$1,563.27.

6 Q. What other items did you deduct out as so-called non-
7 income items?

8 A. I examined the microfilms of the checks which Marine
9 Midland provided that were deposited to Dr. Booth's
10 account and there was four checks that Dr. Booth
11 deposited but these checks indicated they were not from
12 sources that were taxable to Dr. Booth.

13 Q. You are down at Line 29 now?

14 A. Line 29.

15 Q. And what were those amounts for '66 and '67?

16 A. In 1966 they amounted to \$63.70 and 1967 they were
17 \$16.07. These moneys were not taxable income to
18 Dr. Booth, so they were deducted from the amounts, the
19 deposits.

20 Q. I think we left one other item out here, Line 27,
21 Item K, I think it is referred to, bank transfers.
22 What is that item?

23 A. In 1968 Dr. Booth transferred \$13,000 from his checking
24 account to his savings account and the deposits to his
25 savings account that year were included in the total

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1 deposits and cash expenditures of ninety-six thousand
2 eight one four 0 nine for 1968 but they did not
3 represent income to Dr. Booth, just a transfer between
4 accounts, so this amount had to be excluded.

5 Q. Were there any other transfers between accounts that
6 you found in these records?

7 A. No, sir.

8 Q. All right. Did you then total all of these non-income
9 items?

10 A. I did, and in 1969, - or in 1966 they totaled \$6,932.27
11 and in 1967 they totaled \$2,199.86 and in 1968 they
12 totaled \$15,330.14.

13 Q. After arriving at the total for these non-income items,
14 what did you do with the figure?

15 A. These amounts were deducted from the total deposits
16 and cash expenditures and the figure arrived at, I
17 arrived at, would be Dr. Booth's receipts from his
18 office practice in those three years.

19 Q. After arriving at that figure, Mr. Ciesla, what was
20 the next step you performed?

21 A. I deducted the business expense, business expenses
22 which I computed for Dr. Booth in 1966, 1967 and 1968
23 to arrive at his net income from his medical practice
24 in those years.

25 Q. How did you arrive at the figures for the business

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1 expenses in each of these three years?

2 A. Well, I analyzed the cancelled checks, the check stubs
3 and the accountant's work papers which Dr. Booth had
4 provided and I also analyzed the bank statements for
5 the three years.

6 Q. Mr. Ciesla, would you look, please, at Government
7 Exhibit 1 and would you, if you can, find on that
8 exhibit the cost, or rather, the business expenses
9 which Dr. Booth stated he had for 1966?

10 A. I would have to total two figures on here to arrive
11 at the total business expenses. I would have to add
12 them up.

13 Q. Go ahead. What figures are you totaling?

14 A. I am totaling, - this is Schedule "C" on Dr. Booth's
15 1966 tax return. I am totaling the amount shown here
16 as cost of goods sold and the amount called "Total
17 Business Expenses".

18 Q. Why did you take those two figures?

19 A. Because those were the two figures that were used to, -
20 which Dr. Booth had deducted from his office receipts
21 in 1966 to arrive at his net income from his business.

22 Q. All right. Now, according to Dr. Booth's 1956 returns,
23 what are the totals, - what is his total of business
24 expenses?

25 A. \$19,664.12.

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- 1 Q. Is that figure higher than the, - or rather, is that
2 figure lower than the figure you have in Exhibit 48?
- 3 A. The figure I have is \$19,928.93 which is slightly
4 higher than the amount that Dr. Booth had deducted.
- 5 Q. All right. Now, what is, - what would be the effect on
6 the taxable income of a higher business expense figure?
- 7 A. It would make the taxable income lower.
- 8 Q. And would make the tax lower also?
- 9 A. Yes, sir.
- 10 Q. All right. Now, did you arrive at the business expenses
11 for Dr. Booth in '67 and '68 in the same manner?
- 12 A. Basically, yes, sir.
- 13 Q. Well, would you describe if there was any difference
14 for either of the two years?
- 15 A. Well, in 1966 we did not receive the accountant's work
16 papers which he used in 1967 and 1968. We did not have
17 those figures so I had to do it a little differently.
- 18 Q. All right, and how did you do it?
- 19 A. What I did was I made a, - I analyzed each check that
20 Dr. Booth submitted, the check or the check stub, and
21 I totaled these amounts up and I made, - I put these
22 amounts into different categories. They had to be
23 either business expenses, capital expenditures, personal
24 deductible items or personal items which were not
25 deductible and what I did in 1966 was I listed each check

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1 or check stub on the schedule. I did it in numerical
2 order starting in January of 1966 and page after page
3 until December of 1966 and on the schedule I showed
4 the check number, the date it was issued, who the check
5 was paid to, the amount of the check and any descriptive
6 comment on the check or the check stub which would
7 indicate the purpose of the check, and then using the
8 descriptions on these checks or the check stubs, I
9 would determine the purpose of the check, whether it
10 was a business check or whether it was capital or
11 personal or personal non-deductible and then I totaled
12 up all the checks which were considered business
13 deductions in that year.

14 Q. Did you do this for both '67 and '68?

15 A. Yes, sir.

16 Q. And what figure did you arrive at for business expenses
17 for the year 1967?

18 A. Twenty-five thousand 0 fifty-six sixty-one.

19 Q. Would you look, please, Mr. Ciesla, at Government
20 Exhibit 2, the 1967 tax return, particularly Schedule
21 "C" and would you tell me the figure that Dr. Booth
22 used for his business expenses for that year?

23 A. \$23,735.91.

24 Q. Did you allow him more in business, - in your computation
25 of business expense than he took on his '67 return?

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1 A. Yes, sir.

2 Q. Now, would you look at Government Exhibit 3, please.
3 Again, Schedule "C", and would you also tell me the
4 figure used by Dr. Booth for business expense for that
5 year?

6 A. \$28,365.14.

7 Q. Now, did you allow him approximately \$5,000 more in
8 expenses for that year in your computations?

9 A. Yes, sir.

10 Q. All right. Now, after arriving at these, or rather
11 after totaling all the deposits and subtracting out the
12 business, the non-income items and then what did you do
13 after arriving at the business expenses?

14 A. Then I deducted the business expenses from the previous
15 total which I had and I arrived at Dr. Booth's net
16 income from his business or from his medical practice
17 in each of the years.

18 Q. That does not include his W-2 or interest income and the
19 like, is that correct?

20 A. No, it doesn't.

21 Q. After arriving at that figure, Mr. Ciesla, what did
22 you do?

23 A. I then added in all the other income which Dr. Booth
24 had reported in these three years on his tax returns.

25 Q. After arriving at a figure for net income from his

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1 medical practice, - well, what were you doing next,
2 what did you want to find out next?

3 A. I wanted to arrive at his total income for each
4 particular year.

5 Q. And so did you then add in these income items?

6 A. Yes, sir.

7 Q. Represented in Column 5, or rather, Line 5 and below.

8 A. Yes, sir.

9 Q. All right, and what is the first item, bank savings
10 account interest?

11 A. These were the, - these amounts of \$297.07 in 1966,
12 \$456.88 in 1967 and \$737.93 in 1968, this was the
13 interest that was earned on Dr. Booth's savings account
14 for those three years which he reported on the return
15 and I added these figures to his net income from his
16 practice.

17 Q. And what is the next item?

18
19 THE COURT: Mr. Burns, let us do this. We will
20 take a recess at this time and resume
21 in about ten or fifteen minutes. You
22 may go out with the marshal. Will you
23 please, ladies and gentlemen, just
24 leave those slips or pieces of paper
25 on your chairs so you can pick them up

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when you return.

(Recess taken at 3:17 p.m.)

* * * * *

D. P. Ciesla, for Government, Direct.

1 PROCEEDINGS: After recess, 3:35 p.m.

2 APPEARANCES: As before noted.

3 (Defendant present.)

4 (Jury present.)

5
6 D A V I D P. C I E S L A, a witness called by and in
7 behalf of the Government, having been previously duly sworn,
8 resumed the witness stand and testified further as follows:

9
10 DIRECT EXAMINATION BY MR. BURNS (Resumed):

11 THE COURT: Mr. Burns.

12 BY MR. BURNS:

13 Q Now, Mr. Ciesla, at the break, I think we left off at
14 Line 7 of Government Exhibit 48 which reads "Interest,
15 Falls Budget Corporation, Falls Resources Corporation".
16 Can you tell me what that item is?

17 A These amounts represent interest that Dr. Booth re-
18 ceived from the Falls Budget Corporation and the
19 Falls Resources Corporation which he deposited to his
20 account in those years and reported the income from
21 these sources, this source.

22 THE COURT: Excuse me, Mr. Ciesla. You have
23 to make sure that the jury hears you.
24 Maybe they can, but your voice is
25 dropping.

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1 BY MR. BURNS:

2 Q Do you know what this interest item is for Falls
3 Budget Corporation?

4 A These are interest checks which he received and deposited
5 into his checking account in each of the years and
6 which he reported on his tax return in each of the
7 years as interest income.

8 Q Do you know what it is interest on?

9 A Some debentures.

10 Q And what is the next item on Line 8?

11 A Interest income, John Hancock Mutual Life Insurance
12 Company. Dr. Booth had a life insurance policy with
13 John Hancock and in 1967 and 1968, they credited his
14 account with \$10.10 in 1967 and \$14.13 in 1968. They
15 did not issue Dr. Booth a check for these amounts, but
16 they did send him a 1099 form which he used to report
17 on his tax return.

18 Q And what is on Line 9?

19 A Line 9 is gain on sale of property. That represents
20 monies which were credited to his mutual fund account
21 through the Bank of New York and these amounts were
22 reported to Dr. Booth on 1099 forms.

23 Q And what is Line 11?

24 A Line 11 is taxable dividends and in 1968 it was \$3.79.
25 This amount is what is called excludable dividends which

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1 were credited to Dr. Booth's mutual fund account and
2 this amount was on the 1099 which he received from the
3 Bank of New York in 1968.

4 Q Would you describe the item on Line 14?

5 A Line 14 are the gross wages he received from Nuclear
6 Materials & Equipment Corporation. These amounts were
7 indicated on the W2 forms which this company sent to
8 Dr. Booth and which he reported on his tax returns as
9 wages.

10 Q Now, would you look back, Mr. Ciesla, at Line 15 on
11 Page 1 of the exhibit where there appears another item
12 entitled "Nuclear Materials & Equipment Corporation".
13 The figures here appear different for 1966, '67 and '68
14 from the figures on Page 2. Can you tell me why there
15 is a difference?

16 A The figures on the first page represent the net wages
17 that he received, the checks that he received from this
18 company. The figures on the second page represents the
19 total gross wages that he received from Nuclear Materials
20 & Equipment Corporation. The difference is the deductions
21 that they took out of his pay check.

22 Q And what is Item 15, or rather, Line 15?

23 A Line 15 is the compensation from New York Central
24 Railroad in 1966. This is the amount that New York
25 Central Railroad indicated on the W2 form that they

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- 1 gave Dr. Booth for that year.
- 2 Q Now again, the item on Page 1 for New York Central
- 3 Railroad, Line 16, is different for that year 1966.
- 4 What is the reason for that difference?
- 5 A The amount on Page 1 is larger. I requested from
- 6 the New York Central Railroad all the checks they
- 7 issued to Dr. Booth in 1966 and what they sent me was
- 8 the total that is on Page 1. Those are the total
- 9 checks they issued to Dr. Booth in 1966.
- 10 Q And what is represented by the item on Line 15, Page 2?
- 11 A That is the amount that they told Dr. Booth they paid
- 12 him in 1966 which he reported.
- 13 Q So did you, in this case, accept the taxpayer's figure?
- 14 A On Page 2, yes.
- 15 Q And Line 16, what is that item?
- 16 A That was the compensation which he received in 1966
- 17 from John Hancock Life Insurance Company. He received
- 18 a W2 for this amount and this is what he reported on his
- 19 return.
- 20 Q Now, after taking all of these other income items,
- 21 did you add them up?
- 22 A Yes, sir, I did, and the other income totaled \$2,207.12
- 23 in 1966; \$2,969.63 in 1967 and \$3,462.65 in 1968.
- 24 Q After reaching those totals, what did you do with them?
- 25 A I added those totals to Dr. Booth's net income from

D. P. Ciesla, for Government, Direct.

1 his business practice.

2 Q And did you arrive at the figures in Line 21?

3 A Yes. They total thirty-nine thousand two eighty-one
4 ninety-six in 1966; forty-nine thousand six seventy-
5 six thirty-five in 1967 and fifty-one thousand seven
6 eleven ninety-nine in 1968.

7 Q What was the next step in the bank deposit analysis?

8 A Dr. Booth, being a self-employed individual had what is
9 known as a so-called Kahoe Plan which is a self-employ-
10 ment retirement deduction and he made contributions to
11 this plan in 1968 and was able to deduct these payments
12 from his total income.

13 Q And did they total the amounts that appear in columns
14 1966, '67 and '68?

15 A The amounts are eight twenty-one thirty-four in 1966;
16 eight nineteen o eight in 1967 and \$1,635.73 in 1968
17 and these figures appeared on Dr. Booth's tax return.

18 Q And did you then deduct these, this figure from your
19 total income figure?

20 A Yes. These were deducted and I arrived at Dr. Booth's
21 adjusted gross income which was \$38,460.62 in 1966;
22 forty-eight thousand eight fifty-seven twenty-seven in
23 1967 and fifty thousand o seventy-six twenty-six in
24 1968.

25 Q And what was the next step in the analysis?

D. P. Ciesla, for Government, Direct.

1 A I then deducted the itemized, - personal itemized
2 deductions which I computed in each of the years and
3 I deducted the exemptions of \$1,200 in each year.

4 Q How did you compute the deductions?

5 A Through my analysis of the cancelled checks and check
6 stubs and the records of Mr. Leonardo which Dr. Booth
7 submitted.

8 Q And did you arrive at the figures that appear on Line
9 29 for each of the three years?

10 A Yes, sir. In 1966, the amount of personal itemized
11 deductions was forty-eight forty-four; in 1967,
12 it was \$5,840.03 and in 1968, it was \$6,496.02.

13 Q All right. Mr. Ciesla, would you look at Government
14 Exhibit 1, please, the 1966 tax return, and would you
15 tell me the figure used by Dr. Booth in his 1966
16 return and where does it appear on the schedule, the
17 return?

18 A It appears on the second page which shows the various
19 itemized deductions which a taxpayer takes for that
20 particular year and the total on the 1966 return is
21 \$4,706.

22 Q Did you allow Dr. Booth personal itemized deductions
23 higher than he took on his own return?

24 A The deductions which I found were about \$136 larger than
25 what Dr. Booth took that year.

D. P. Ciesla, for Government, Direct.

- 1 Q Would you look at Government Exhibit 2, please, which is
2 the '67 return and would you tell me what the figure is
3 on Dr. Booth's return for his itemized deductions?
4 A The amount of total deductions is \$5,586.20.
5 Q Is that again higher, - is your figure, rather, again
6 higher than the amount the doctor took?
7 A The deductions which I found were approximately \$240
8 larger than what was claimed on the tax return that
9 year.
10 Q And finally, would you look at Government Exhibit 3,
11 the '68 return and what figure did Dr. Booth use for
12 his tax return for that year?
13 A Total deductions on the tax return was \$6,302.99 and
14 that was about a hundred ninety less than what I
15 computed.
16 Q What is the effect of higher deductions?
17 A It would lower the taxable income for that particular
18 year.
19 Q Now, Line 30 is entitled "Exemptions". How did you
20 arrive at the figures on the schedule?
21 A Those were the figures that were on Dr. Booth's tax
22 return. He was entitled to two exemptions at \$600
23 each or \$1,200 for each year.
24 Q And did you then subtract the exemptions and deductions
25 from the adjusted gross income?

D. P. Ciesla, for Government, Direct.

- 1 A I did, and in 1966, I arrived at corrected taxable
2 income of thirty-two thousand four twenty nineteen;
3 in 1967, the amount was \$41,817.24 and in 1968, the
4 amount was \$42,380.24.
- 5 Q I am showing you Exhibit 1. Can you tell me what figure
6 Dr. Booth arrived at for his taxable income for 1966?
7 A \$20,360.32.
- 8 Q Would you look at Exhibit 2, please, and tell me what
9 figure you find there for taxable income?
10 A \$29,718.97.
- 11 Q And finally, would you look at Exhibit 3, Government's
12 Exhibit 3 and tell me what figure you find on the '68
13 return for taxable income?
14 A \$28,707.79.
- 15 Q Mr. Ciesla, would you look, please, at Defendant's
16 Exhibit 19. Have you seen this exhibit before?
17 A I saw it yesterday.
- 18 Q Did you see it at anytime before yesterday?
19 A No, sir.
- 20 Q Did you also see yesterday another bookkeeping record
21 for the year 1968?
22 A It was identical to that book. That was the first time
23 I saw that book.
- 24 MR. BURNS: I have no further questions.
25

D. P. Ciesla, for Government, Cross.

CROSS EXAMINATION BY MR. FEIN:

Q Mr. Ciesla, did you work with Ron Luke in the preparation of your report? Was this a joint investigation in conjunction with Mr. Luke?

A It was a joint investigation.

Q And was Mr. Luke the Revenue Agent assigned to work with you?

A Yes, sir.

Q And does he, - he, in effect, represents the Auditing Division, is that right?

A Yes, sir.

Q Now, normally, who would prepare a schedule, Government Exhibit 48?

A Special agent.

Q Oh, the auditor doesn't prepare that?

A That is a special agent's computation.

Q Do you mean there is another computation that he prepared?

A He prepared - -

THE COURT:

You asked him about one particular report and he said he prepared it.
Go ahead, Mr. Fein, but it just seemed to me that you were then talking about something else.

D. P. Ciesla, for Government, Cross.

1 BY MR. FEIN:

2 Q I am sorry, your Honor. I thought he said that this
3 was the report that he prepared and I thought maybe
4 Mr. Luke prepared one too. This is what I was trying
5 to ascertain.

6 A Well, Mr. Luke would prepare a revenue agent's report.

7 Q Which arrives at the computation of corrected taxable
8 income?

9 A He arrives at a computation of taxable income for audit
10 purposes.

11 Q Do you know whether or not it was different than this
12 figure?

13 A I believe it was.

14 Q Substantially different?

15 A I haven't seen it in a while. I think it was different.

16 Q Two fellows working with the same records, you in one
17 department, he is in another department, working
18 together and you both get different answers.

19 A Well, the criteria that they use in the Audit Division
20 is different than the criteria we use in the Intelligence
21 Division.

22 Q Did Doctor, - did my office, a member of my office
23 turn over to you, before you prepared this schedule,
24 copies of the Government's Exhibits 4, 5 and 6 in
25 evidence, the amended returns?

D. P. Ciesla, for Government, Cross.

1 A I believe you mailed me copies of these amended returns.

2 Q Did you come over at any time and get the work papers
3 from my office which we turned over to you in connection
4 with the preparation of these?

5 A Yes, sir.

6 Q Were those prepared, to the best of your knowledge,
7 were they prepared on a bank deposit method as yours
8 was?

9 A I don't know, really, how you prepared, - your employee
10 prepared the return.

11 Q You don't know. Do you have the work papers that we
12 sent you?

13 A I believe they are here somewhere.

14 Q I see. Well, for the time being, we will skip that
15 then.

16 A You know, I think you told me how you prepared it, but
17 I don't know.

18 Q What did I tell you?

19 A I think you said that you did a bank deposit analysis.

20 Q Do you recall those work papers at all? Do you recall
21 seeing them?

22 A Oh, yes.

23 THE COURT: Are you talking about his work
24 papers?

25 MR. FEIN: No, from my office, your Honor.

D. P. Ciesla, for Government, Cross.

1 THE COURT:

I don't know. There is no objection, but how can he be bound by anything that you did or somebody in your office did?

5 MR. FEIN:

Well, I was just trying - -

6 THE COURT:

We do not know where they got the information or anything else. Let us confine ourselves to asking questions about what we have in court here, not speculating about what may be somewhere else. Next question, please.

12
13 BY MR. FEIN:

14 Q Well, were you told that they were prepared on the
15 bank deposit method?

16 A You are talking about yours?

17 THE COURT:

Mr. Fein, if you would explain to me what difference it makes what another man used, I will listen to you. I cannot understand. He used one system. Why don't you ask about whatever work Mr. Ciesla did, not what somebody else did.

23 MR. FEIN:

Well, your Honor, we could - -

24 THE COURT:

You may argue that one system is better than another. If so, Mr. Ciesla

D. P. Ciesla, for Government, Cross.

1 just does not know. You can argue that,
2 but this is not the time for argument.
3 Please ask him some questions about what
4 he did.
5

6 BY MR. FEIN:

7 Q Well, did you verify the work papers that we prepared?

8 A I would have looked at them, but that would have been
9 the extent of it. I might have compared the work papers,
10 the final figures you had on your work papers to what
11 was on the amended return, but that would have been
12 the extent of it.

13 Q Well, when Mr. Luke originally started his examination
14 of Dr. Booth, he went to the bank or he listed all of
15 the deposits that were made to Dr. Booth's account, is
16 that right?

17 A Well, I don't know if he went to the bank or not.

18 Q But the schedule that was used in his referral to you
19 was based on the deposits made to Dr. Booth's account?

20 A I believe he - -

21 THE COURT: Which are you talking about, Mr.
22 Luke's?

23 MR. FEIN: Mr. Luke's.

24 THE COURT: Did you use Mr. Luke's papers in
25 your analysis?

D. P. Ciesla, for Government, Cross.

1 THE WITNESS: Well, I would have looked at them,
2 your Honor, but I didn't use them when
3 I was preparing this particular schedule,
4 my final figures.

5 THE COURT: All right. Ask him about something
6 else, rather than Mr. Luke. We had
7 Mr. Luke here. He was cross examined.
8 The jury can take that into account.

9 MR. FEIN: Okay.

10 THE COURT: But since he did not analyze and
11 use Luke's papers in detail, I cannot
12 see how it would be helpful to us now
13 to listen to his speculation about what
14 Luke did.

15
16 BY MR. FEIN:

17 Q In the interview, - memorandum of interview, - what
18 is that number, the memorandum of interview dated
19 October 12, 1971, you are familiar with this. That is
20 when I went over with Dr. Booth and we had our meeting,
21 is that right?

22 A Yes.

23 Q And on the last page, I also show him a work sheet
24 which listed his reported income by source over several
25 years and asked him why the word "unavail" appeared in

D. P. Ciesla, for Government, Cross.

1 the 1968 column in the Medicare Part B line.

2 Now, whose work sheet was that?

3 A That was the sheet that Dr. Booth gave Mr. Luke.

4 Q But whose sheet was it, who prepared it?

5 A I believe it was prepared by Mr. Lonardo.

6 Q And did you ask Mr. Lonardo anything about that "unavail"?

7 A I don't remember if I did. I don't think I did.

8 Q You didn't?

9 A I don't think I did.

10 Q So if Mr., - you never questioned Mr. Lonardo about
11 it at all?

12 A I don't remember doing it.

13 Q Now, how did Mr., - do you recall the sequence of
14 events as to Dr. Booth appearing in your office?

15 A I believe I sent you a letter asking that, - if I could
16 interview Dr. Booth.

17 Q Do you remember the date of that letter?

18 A No, sir.

19 Q Well, isn't it a fact that somewhere on or about
20 October 1st I called you or we exchanged calls,
21 apparently, and I asked you to appear at my office on
22 October 5th of '71?

23 A If that is what it says there, or if that is what it
24 would say in the memorandum of the telephone call.

25 Q And then you came to my office?

D. P. Ciesla, for Government, Cross.

- 1 A Yes, sir.
- 2 Q And then did we arrange for a meeting, a mutual meeting
- 3 so I could bring Dr. Booth into your office?
- 4 A I think it was arranged at that time.
- 5 Q And we voluntarily, - did Dr. Booth at this stage of
- 6 the game, did he have to appear before you, did he have
- 7 a constitutional right not to appear?
- 8 A Absolutely.
- 9 Q And you read him those rights?
- 10 A No, I didn't read him those rights.
- 11 THE COURT: Mr. Ciesla, do not talk to Mr.
- 12 Fein. Talk to the jury, please.
- 13
- 14 BY MR. FEIN:
- 15 Q Did you read him those rights at the beginning of the
- 16 interview?
- 17 A No, I didn't.
- 18 Q But generally speaking, you did tell him he had a
- 19 right to remain silent, is that right?
- 20 A That's correct.
- 21 Q Then we accepted that and we still persisted in pursuing
- 22 our meeting, is that right?
- 23 A We had an interview, yes.
- 24 Q Did we have any objection to a Q and A?
- 25 A No, sir.

D. P. Ciesla, for Government, Cross.

- 1 Q And whatever he said, you warned could be used against
2 him in a criminal proceeding?
- 3 A Yes, sir.
- 4 Q And we continued our share of the meeting, is that
5 right?
- 6 A Yes, sir.
- 7 Q And didn't Dr. Booth tell you that until he had talked
8 to me just a short time prior to this meeting, that
9 he, and these are the words that you used, is that
10 right?
- 11 A Can I look at it?
- 12 Q Sure. "He indicated that up until he talked to Mr.
13 Fein several Saturdays ago, he had no idea of what we
14 were interested in or looking for. He didn't know if
15 we were looking for something specific or whether we
16 were trying to harass him. Mr. Luke and Mr. Pasquarella
17 had told him about a bank deposit analysis, but he didn't
18 understand what they had meant by that"?
- 19 A That's right.
- 20 Q "He gave them all the records that they had asked for
21 which he had", right? "The last time he talked to Mr.
22 Luke and Mr. Pasquarella, he had told them that he
23 wanted to pay the Government whatever he owed and they
24 indicated that they would be in touch with him when they
25 found that out", is that his word?

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1 A Those are Dr. Booth's words.

2 Q And didn't he continue on and say that he reported his
3 income based on the 1099's?

4 MR. BURNS: Your Honor, I object to reading
5 the whole memorandum.

6 MR. FEIN: This is just, your Honor - -

7 THE COURT: Is this Mr. Ciesla?

8 MR. FEIN: This is Booth, your Honor.

9 THE COURT: Just a minute. Is that Mr. Ciesla's?

10 MR. FEIN: Yes.

11 MR. BURNS: He has already testified to these
12 points. Now we are having the memorandum
13 read in.

14 MR. FEIN: No, it isn't.

15 THE COURT: Mr. Fein, the rule is a simple one.
16 If it is contradictory to testimony
17 before you may read it. If it is merely
18 to refresh the witness's recollection
19 so you may ask him a question about some
20 further point not covered in direct
21 examination, then do not read it, but
22 merely show it to the witness.

23
24 BY MR. FEIN:

25 Q By the way, Mr. Ciesla, you keep, - we use the term

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"cash basis taxpayer". Does that mean that if somebody gets checks, he is not required to pay tax on them?

A What it refers to is the time when an individual reports income he earns.

Q Cash basis - -

THE COURT: Mr. Fein, are you trying to elicit from the witness the law or are you trying to bring out a point where he has been inconsistent? I do not think any of us disagree on the law.

MR. FEIN: Okay.

THE COURT: Mr. Ciesla, you and I and Mr. Burns all agree if I give someone \$5 in cash or a \$5 check for payment of services, that is cash income. We agree, right?

MR. FEIN: That's right.

THE COURT: Is that the point?

MR. FEIN: Yes.

THE COURT: All right. Can we go on to something else, please.

BY MR. FEIN:

Q Is there another method of reporting in?

A There is what is called the accrual method which means

D. P. Ciesla, for Government, Cross.

1 that as far as income a person receives, he would
2 receive it, the income, or he would report the income
3 when he earned it.

4 Q Is there any reason or is there any rule that precluded
5 Dr. Booth from adopting that?

6 A It has to be done consistently year after year unless
7 you get approval of the Commissioner.

8 THE COURT: There is no question about it at
9 all, Mr. Fein, is there? Dr. Booth was
10 on a cash basis.

11 MR. FEIN: Right.

12 THE COURT: Not the accrual. You do not claim
13 he was on the accrual basis?

14 MR. FEIN: No. I was just asking.

15 THE COURT: It may be interesting but it does
16 not make any difference.

17 MR. FEIN: Didn't Dr. Booth, - your Honor, I
18 can't remember exactly what words, what
19 he read from this when he was testifying.

20 THE COURT: Why don't you just ask the question,
21 Mr. Fein.

22 MR. FEIN: Okay.

23 THE COURT: We are not going to be hard on you
24 at all. We just want to go ahead
25 simply. If it has been brought out

D. P. Ciesla, for Government, Cross.

1 once and you know it has been brought
2 out once, then it does not serve any
3 purpose to repeat it all over again.
4 If you believe sincerely that this may
5 be inconsistent then read it and ask
6 him if this is what was said.

7 BY MR. FEIN:

8 Q Did Dr. Booth tell you that he had deposited all the
9 checks that he had received in '66, '67 and '68?

10 A Yes.

11 Q And did you find that that was true in your investigation?

12 A I did not find any checks which he did not deposit.

13 Q He deposited all the checks that he received?

14 A I did not find any checks that he did not deposit.

15 Q Now, if Doctor, - if a person on the cash basis, -
16 if Doctor had cashed those checks and not deposited
17 them, how would you have determined what his correct
18 income was, - should have been?

19 A It would have been income to Dr. Booth when he received
20 the checks.

21 Q And how would you have ascertained that?

22 A I don't know if we would have.

23 Q And isn't that why you sent out a canvas of Doctor's
24 patients?

25 A I believe at the time I sent this canvas out, I did not

D. P. Ciesla, for Government, Cross.

1 know that Dr. Booth would, - that I would have an
2 opportunity to interview Dr. Booth and that he would
3 admit that he was not reporting all of his income.

4 Q Well, what did the canvas letters, - I see that you
5 have on your work sheet that three, - you spent three
6 days sending out canvas letters?

7 A Well, I spent some time in three days sending out
8 canvasses, writing them up, preparing them.

9 Q And approximately how many did you send out?

10 A Well, are these the canvas letters to Dr. Booth's
11 patients?

12 Q I don't know. What other letters did you send?

13 A Well, we did, - we sent a letter to the various banks
14 in the area to see if Dr. Booth had accounts, any other
15 accounts in these banks.

16 Q And what were the replies?

17 A There was no, - Dr. Booth had no accounts and I think
18 at any other bank in the area.

19 Q And what were the letters, - what were the canvas
20 letters to the patients about?

21 A I wanted to find out how much each of these patients
22 paid Dr. Booth in these years.

23 Q And what did you learn?

24 A Well, I got replies, - I don't remember how many replies
25 I received. I think it was seven or eight replies that

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1 were received.

2 Q Out of how many letters?

3 A I think it was about twenty-five, thirty.

4 Q Only twenty-five or thirty?

5 A I think so.

6 Q And you put this down as three separate days that you
7 worked. Is that the time or is that the time you were
8 sending out letters to the banks. That was June 22nd.

9 A No. That probably would have been those canvas letters.

10 Q Now, what is a form 872?

11 A That is a form that the Audit Division uses to extend
12 the civil, - extend the assessment of taxes beyond the
13 normal audit period of, - statute of limitation.

14 Q And did you send some forms 872 to the doctor or did
15 you know about an 872 being mailed to him for '66 and
16 what happened on that, about that?

17 A I don't think we mailed anything to the doctor. At least
18 I didn't.

19 Q Did you mail anything to me, do you know anything about
20 it?

21 A I think I gave you some forms.

22 Q For what year were they?

23 A I think 1967 and 1968.

24 Q And did I, - did the doctor respond and extend the
25 statute of limitations?

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- 1 A I think for 1968, I believe you would have signed the
2 forms and the 1967 I don't think you did.
- 3 Q And the form for 1968 that was signed to which Dr.
4 Booth extended the statute of limitations was a form
5 after you had been, - he had been interviewed by you,
6 isn't it?
- 7 A Let me check that.
- 8 Q The date of our interview was October 12, is that right,
9 '71?
- 10 A Correct.
- 11 Q Okay, and there is a notation here "received Form 872
12 for '68 dated January 17, 1970".
- 13 A Correct.
- 14 Q So it was after we had had our meeting and Doctor had
15 made his disclosures to you, is that right?
- 16 A Probably. I may have asked him prior to that.
- 17 Q But you got it back executed after that.
- 18 A Yes, sir.
- 19 Q Now, what is the purpose of the 872?
- 20 A Again, it is a form that the Audit Division uses to
21 extend the civil statute of limitations, extend the
22 assessment of taxes on a particular year so the civil
23 statute of limitations does not run out, extends the
24 statute.
- 25 Q And didn't, - if, - what would happen if we hadn't signed

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- 1 that Form 872, what would have occurred at that time?
- 2 A You would have to be a little more specific.
- 3 Q Well, supposing we hadn't extended the statute?
- 4 A But what, - a little more specific about what would have
- 5 happened, in what area.
- 6 Q Well, in the civil area.
- 7 A Well, the statute would not have been extended for an-
- 8 other year, the civil statute.
- 9 Q And then, in fact, you couldn't assess that tax against
- 10 the doctor?
- 11 A Well, I believe you filed amended returns and I am not
- 12 positive, but I think that would, - I think that might
- 13 extend the civil statute. I am not positive, Mr. Fein.
- 14 Q What is meant by the term "voluntary payment" in tax
- 15 matters?
- 16 A I have never come across it as, you know, a general
- 17 term that is used in the Internal Revenue Service.
- 18 Q You have been with the Service how long?
- 19 A Since 1969.
- 20 Q Okay. Now, I show you Government Exhibit 4 which is
- 21 in evidence which is the amended 1966 tax return.
- 22 Now, the original return which is Exhibit 1 was filed
- 23 on or before April 15, 1967, is that correct?
- 24 A I believe it was.
- 25 Q And what is the normal statute of limitations within

D. P. Ciesla, for Government, Cross.

1 which the Internal Revenue can conduct an audit and make
2 an assessment?

3 A I believe it is three years from the date the return
4 was filed or from April 15th of the year it was filed.

5 Q So that in nineteen, - so that if, - so that that
6 particular statute would have expired on April 15, 1970,
7 is that right?

8 A You are talking the original 1966?

9 Q Right.

10 A It would have been filed in 1967, '68, '69, 1970.

11 Q 1970, right, so that normally, under normal circumstances,
12 the Internal Revenue would have no right to collect
13 any more money from Dr. Booth, is that right?

14 A If the Internal Revenue could show that the individual
15 understated his business receipts by, I believe it is
16 twenty-five per cent, then the statute will be, - can
17 be extended to six years, the civil statute.

18 Q And must there also, - and has there been a civil
19 assessment made against Dr. Booth as of this date?

20 A I wouldn't know that, Mr. Fein.

21 Q There is no way of you finding out?

22 A Okay, but first of all, what year?

23 Q '66. Do you have the statement, transcript of account?
24 I show you Government Exhibit 7 in evidence which is
25 a certificate of assessment of payment from Andover.

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D. P. Ciesla, for Government, Cross.

One of your men testified in connection thereto, and this, as I understand from his testimony, represents the activity in Dr. Booth's tax account for the year 1966.

A Well, I wasn't here when he testified.

Q Okay. Well - -

THE COURT: You are familiar, Mr. Ciesla, with this form. It is in evidence. It has to do with the return filed in 1966, but it may reflect payments made after that, as I understand.

BY MR. FEIN:

Q That is correct. Now, does that form show that there has been another other assessment made against Dr. Booth for '66?

A I don't fully understand the forms, but - -

THE COURT: Mr. Fein, is the purpose to show here that there has been no attempt to further collect any civil tax?

MR. FEIN: Well, I think the purpose - -

THE COURT: Is that the purpose?

MR. FEIN: Yes, and also - -

THE COURT: Mr. Burns.

MR. BURNS: I object, your Honor.

D. P. Ciesla, for Government, Cross.

1 THE COURT:

2 All right. I will sustain the
3 objection. Ladies and gentlemen, we
4 are not concerned here with the civil
5 tax. Whether or not Mr. Booth is going
6 to be required to pay additional civil
7 tax, interest or anything else, that
8 is left to a different procedure. We
9 are left only with the question of whether
10 or not he filed tax returns which were
11 willfully and fraudulently filed. It
12 does not matter whether or not the
13 Internal Revenue Service has attempted
14 to collect any additional civil tax.
15 That is not an issue. That is not the
16 point. Whether they did or they did
17 not does not make any difference.
18 All right. Next question, please, Mr.
Fein.

19 BY MR. FEIN:

20 Q Does that form indicate that Dr. Booth made a payment
21 on an amended return, and as of what date?

22 A I know Dr. Booth did make a payment with the amended
23 return but - -

24 THE COURT:

25 Mr. Fein, you had Mr. Pelland here.
He was the man that prepared this form.

D. P. Ciesla, for Government, Cross.

1 He was the man that was familiar with
2 how these forms are prepared. It seems
3 to me that he was the man to ask about
4 that. Mr. Ciesla, you know this, is
5 in another area of expertise. I think
6 you and Mr. Burns can agree upon a joint
7 statement that can be made, - the point
8 you are trying to make with Mr. Ciesla.
9 If you cannot, you come to me and I will
10 make the statement, but Mr. Ciesla is
11 not obliged to answer these questions.
12 He had nothing to do with the prepara-
13 tion of that form.

15 BY MR. FEIN:

16 Q Well, Mr. Ciesla, do you know whether or not, - you
17 know that the doctor did, in fact, file amended returns?

18 A Correct.

19 Q And that he did, in fact, report income and pay tax
20 in excess of what you are asking in this indictment?

21 A Correct.

22 Q If an individual has filed a tax return and there is, -
23 and he finds, subsequently, that it is incorrect,
24 does he have, - should he or does he have a right to
25 file an amended return?

D. P. Ciesla, for Government, Cross.

1 A I think there is a requirement that he has to file
2 an amended return.

3 THE COURT:

Mr. Fein, I do not like to interrupt
4 and there is no objection, but I think
5 we have to have a word of explanation.
6 The point of time that we are mainly
7 concerned here, ladies and gentlemen,
8 is on the day when Dr. Booth filed his
9 return. Later on, he may have changed
10 his mind about certain things or certain
11 additional information may have come to
12 him and then he may have filed an
13 amended return. If this information was
14 something he just did not know about
15 and he filed an amended return, then
16 that may have some influence in your
17 mind about what his state of mind was
18 on the date he filed the return. The
19 important point that I am trying to make
20 is that in making up your mind as to
21 whether or not he willfully violated
22 the law in this case, we have to keep
23 our attention focused on the day the
24 return was filed and what happened be-
25 fore that. What happened after it may

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OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

D. P. Ciesla, for Government, Cross.

not have any bearing at all upon your determination.

BY MR. FEIN:

Q Dr. Booth did state to you in his interview with you that he hadn't known about his inadvertence or his omission of these checks, is that correct?

A He said that the first time that he was aware of it was when he had talked to you.

Q And so we came over to tell you about it and we subsequently follow that with the filing of these amended returns, is that the sequence of events?

A You did file amended returns.

Q And we paid the tax.

A And you paid the tax on the amended returns.

Q And in this conversation with you, Dr. Booth and I tried to clarify, I believe, or Dr. Booth did, that that reference to the \$13,000 that was, - of cash on hand that he had left with Mr. Luke, that notation - -

A The letter?

Q We tried to explain that he had gotten confused in his wording, is that correct?

A I think that is what he told me.

Q All right, and he said to you he was trying to answer in that letter what he thought Mr. Luke had asked him about?

D. P. Ciesla, for Government, Cross.

1 A That's what he said.

2 Q All right. Dr. Booth said that this was a mistake,
3 he meant to say "savings account", not "checking account",
4 is that right?

5 A That's what he said.

6 Q All right. "Dr. Booth then explained what he was
7 trying to say when he wrote the letter to Mr. Luke when
8 he said that he accumulated these monies since his
9 army days he meant that he had been saving money since
10 then and not that these specific amounts which he put
11 into his savings account in 1968 were cash monies he
12 had saved over the years", right?

13 A That's what he said.

14 Q "He asked Mr. Luke if he remembered the conversation
15 that he had had about this when he, Dr. Booth - - "

16 MR. BURNS: Your Honor, I think we are back at
17 the same stage, Mr. Fein reading the
18 memorandum. Mr. Ciesla already said
19 that Dr. Booth told him these things.

20 MR. FEIN: He didn't say this, I beg your
21 pardon, Mr. Burns.

22 THE COURT: It is up to the jury to determine
23 one way or another. Go on, Mr. Fein,
24 but in areas where it has already been
25 testified to, skip it.

D. P. Ciesla, for Government, Cross.

1 BY MR. FEIN:

2 Q I am, sir. "He asked Mr. Luke if he remembered the
3 conversation that he had about this when he, Dr. Booth,
4 had told him that he had measured a man's worth by
5 what he had saved and not by what he earned"?

6 A This is what Dr. Booth said.

7 Q And then did Mr. Luke say anything at that time?

8 A Yes, he did.

9 Q Mr. Luke said he had no recollection of the conversation,
10 is that right?

11 A I believe that's what's in the interview.

12 Q Based on the interview - -

13 THE COURT: Mr. Ciesla, do not talk to Mr.
14 Fein. Talk to the jury, please.

15
16 BY MR. FEIN:

17 Q And based on those conversations he, Mr. Luke, had in-
18 terpreted the letter to mean that Dr. Booth had accumu-
19 lated cash which he had put in his checking account
20 and later transferred to his savings account?

21 A I didn't get the first part of the question. Repeat
22 it, please.

23 THE COURT: I do not know whether it is a
24 question. The question is, at that time,
25 did Mr. Luke say thus and so, if you

D. P. Ciesla, for Government, Cross.

recall.

THE WITNESS: I didn't hear what Mr. Fein said originally, so I can't say.

THE COURT: All right. Next question, please, Mr. Fein.

BY MR. FEIN:

Q Dr. Booth further stated, didn't he, if you recall, that the monies he had saved and accumulated included both cash and checks he had received in his business?

A Correct.

Q And did he also say, to the best of your recollection, he deposited those checks into his checking account on various intervals when he needed to?

A He deposited checks he received in his business in the checking account at various intervals.

Q Right. Didn't he deposit all his checks that he received including those from other sources, interest income and the refunds from insurance companies and things of that nature?

A Are you asking me did he deposit every check he ever received?

A Yes.

A I don't know that.

Q Well, every check that was, - that you used in making

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WESTERN DISTRICT OF NEW YORK

D. P. Ciesla, for Government, Cross.

1 up your schedule, your adjustments here included items
2 of non-income items and those were deposited, weren't
3 they?

4 A Every check that I knew that Dr. Booth received as
5 far as I know they were deposited.

6 Q Well, do you know of any checks he received that he
7 didn't deposit.

8 A No.

9 Q Okay, and at that point, you asked for Dr. Booth's
10 '66 records?

11 A I believe I did.

12 Q And that you made them available to you and, in fact, you
13 got them, didn't you?

14 A You provided me with the cancelled checks and check
15 stubs for 1966.

16 Q And this is even though you did spell out the fact that
17 this might be a criminal indictment?

18 A I didn't say that. I advised - -

19 Q It was still a criminal investigation in that sense?

20 A Yes.

21 Q Now, do you have the, - when you arrived at the business
22 expenses you worked, - that was your function if, in
23 fact, Dr. Booth was entitled to a deduction in your
24 examination, you ran across that, you were obliged to
25 correct that, weren't you? For example, if you say

D. P. Ciesla, for Government, Cross.

1 there is an increase in business expenses that you
2 allowed him?

3 A That's correct.

4 Q In other words, are you indicating that Mr. Lonardo
5 had made errors?

6 A Not necessarily, no, sir.

7 Q Well, do you know what caused, - where the discrepancies
8 occurred?

9 A I believe Mr. Lonardo prepared the tax returns from
10 the check stubs that Dr. Booth kept.

11 Q Yes.

12 A And there were some checks, cancelled checks, the amounts
13 on the checks did not agree with the check stubs.
14 The amounts were different.

15 Q The amounts were different?

16 A In some cases.

17 Q And how much difference? Do you have the, - did you
18 make a comparison of doctor, - the business expenses
19 that Mr. Lonardo had made and the ones that you had
20 made?

21 A Yes.

22 Q That you found to be correct?

23 A Yes, sir.

24 Q Do you know which of those schedules it is?

25 A It is in one of them.

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WESTERN DISTRICT OF NEW YORK

D. P. Ciesla, for Government, Cross.

1 THE COURT: Mr. Ciesla, what did you call it?

2 Do you have it there, Mr. Burns?

3 MR. BURNS: Yes, your Honor. There are numer-
4 ous schedules.

5 THE COURT: What did you call it so Mr. Burns
6 can find it?

7 MR. BURNS: We have the number. We can find it
8 easily enough. There are about a dozen
9 or a dozen and a half schedules.

10
11 BY MR. FEIN:

12 Q How many checks were there like this, though?

13 THE COURT: Mr. Fein, excuse me. Did this
14 enter into your computation here that is
15 now Government Exhibit 48?

16 THE WITNESS: What we are talking about here?

17 THE COURT: Yes.

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. Why not mark those and
20 give them to Mr. Fein.

21 MR. BURNS: They are already marked as Court
22 Exhibits, your Honor. They are all here.
23 We will get them out.

24 THE COURT: Mr. Fein, they are all pulled out.
25 You can go ahead.

D. P. Ciesla, for Government, Cross.

1 MR. BURNS: I believe Mr. Fein has copies of
2 them all.
3 THE COURT: Why don't you give him the numbers.
4 MR. BURNS: All right.
5 THE COURT: Will you read the records for the
6 record, Mr. Burns.
7 MR. BURNS: Yes, your Honor. Court Exhibits
8 46, 48, 50, 51, 52, 53, 62, 63, 65, 66,
9 67.
10 THE COURT: Do all of these exhibits have to
11 do with the problem Mr. Fein and Mr.
12 Ciesla just talked about? That is,
13 the differences between stub entries and
14 the amounts set forth in the check?
15 MR. BURNS: Not directly. These are Mr.
16 Ciesla's analysis of the checking account
17 and assignment of certain checks to
18 expenses and to other items.
19 THE COURT: I understood Mr. Ciesla to say
20 that when he looked at the stubs and the
21 checks, then he examined the checks and
22 he made a determination that in some
23 instances, there were differences and
24 he prepared a schedule.
25 THE WITNESS: That is correct.

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OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

D. P. Ciesla, for Government, Cross.

1 THE COURT:

What did you call that schedule,
2 Mr. Ciesla?

3 THE WITNESS:

Well, I compared the amounts Mr.
4 Leonardo had on his work papers with
5 what I found and those were, - I broke
6 them down into each individual category
7 of expense that was contained on the tax
8 return.

9
10 BY MR. FEIN:

11 Q Did you summarize them? That is what I am looking for.

12 A There is a summary here. It is called "summary of
13 business expense".

14 THE COURT:

Look through the sheets Mr. Fein
15 has and if you find the summary, tell
16 him which one it is.

17
18 BY MR. FEIN:

19 Q As recall - -

20 THE COURT:

Let him look, Mr. Fein. If you
21 think you know, show him. Mr. Ciesla,
22 did you find it?

23 THE WITNESS:

No. It is not here.

24 THE COURT:

It is not here. Why don't you
25 step down with Mr. Burns then and look

D. P. Ciesla, for Government, Cross.

1 through the exhibits on the table.

2 BY MR. FEIN:

3 Q Do you have it summarized?

4 A Yes. Let me find it.

5 Q That is all right. I just want to see what happened.

6 A No, that is not the right one. Here is the one.

7 THE COURT: Is this the exhibit, Mr. Ciesla?

8 THE WITNESS: This compares Mr. Lonardo's figures
9 to the similar figures he took to what
10 I computed for these amounts.

11 THE COURT: What exhibit number is that?

12 MR. FEIN: This is C82, C82.

13 THE COURT: Court Exhibit Number 82?

14 THE WITNESS: That is for 1968.

15
16 BY MR. FEIN:

17 Q There is only one item I don't quite follow. What is
18 this "additional business expenses"?

19 A Those are, - I have another schedule of additional
20 business expenses, the total of which has been transferred
21 to this.

22 Q I guess it is this W4.

23 A Okay, this is the schedule.

24 Q Well, there is an item of thirteen seventy-seven
25 ninety-one. Do you know what that is, on July 12th?

D. P. Ciesla, for Government, Cross.

1 MR. BURNS: The exhibit number?

2 MR. FEIN: This is 80.

3 THE WITNESS: Is it all 80?

4

5 BY MR. FEIN:

6 Q This is 80. Now, isn't it a fact that taxpayer, -
7 this is your own notation, right?

8 A Correct.

9 Taxpayer's record check stubs do not indicate these
10 payments. Since the nature of these payments are un-
11 known, they are considered additional business expenses,
12 isn't that unusual to do that?

13 A Well, not in the, - for the Intelligence Division it
14 isn't unusual.

15 Q Do you mean you are going to give him a deduction he is
16 not entitled to?

17 A These amounts we didn't know if they were deductible
18 or not deductible so we would consider them deductible
19 because we didn't know what they were.

20 Q In other words - -

21 A Giving the taxpayer the benefit of the doubt.

22 Q What were they?

23 A These were particular items where payments which went
24 through the bank statements that year, amounts that
25 went through the bank statements which I could not

D. P. Ciesla, for Government, Cross.

1 find a check, - which there were no checks or check
2 stubs for.

3 Q Well, may I see what they are?

4 A The amounts?

5 Q Yes, that make up this, - just the large amounts.

6 A This is thirteen hundred?

7 Q Yes.

8 A We would have to find the, - we need the bank statement.

9 Q The bank statement.

10 A The bank statement for - -

11 Q That would be C24 or C25.

12 A This amount. There is an amount on the bank statement
13 of July of 1968 in the amount of \$1,377.91. There was
14 no check or check stub for that amount.

15 Q Now, do you know of any other large checks like that
16 that Doctor had as a business expense?

17 A There have been, - there may have been some other large
18 checks.

19 Q But do you know who they were made payable to?

20 A No. I would have to look at all the checks.

21 Q You don't recall?

22 A No, sir.

23 Q Now, you, - in your investigation and your determination
24 you have concluded that Doctor had done something
25 improper?

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WESTERN DISTRICT OF NEW YORK

D. P. Ciesla, for Government, Cross.

1 MR. BURNS: I object to that, your Honor.

2 BY MR. FEIN:

3 Q That he understated his income, excuse me. Now, why
4 would you want to reduce that understatement?

5 A If there was any doubt about any item at all, I would
6 always conclude in favor of Dr. Booth.

7 Q When you say "any doubt" about what?

8 A Well, like that particular payment of \$1,377. It
9 could have been a business deduction or it could have
10 been a personal deduction. I did not know so I con-
11 sidered it a business deduction.

12 Q Well, along those veins, if, - along that vein, as
13 long as there was a probability or, I think, this came
14 out that there were Medicare payments for which Doctor
15 had not received the 1099 and there was a notation
16 "unavailable", why wouldn't you have given him credit
17 for that, those receipts on the income side?

18 A Well, I don't know what the word "unavailable" meant,
19 what he meant by that word.

20 Q But you remember that work sheet?

21 A Yes, sir.

22 Q And you know each year he had something listed in that
23 work sheet, didn't he, Dr. Leonardo?

24 A Correct.

25 Q And you know that when you went down that work sheet

D. P. Ciesla, for Government, Cross.

1 every item that was on there is what went into that
2 tax return, don't you?

3 A Yes, sir.

4 Q And that you found everything there to be correct,
5 didn't you?

6 A On the work sheet?

7 Q Yes.

8 A There may have been a couple of minor adding errors.

9 Q But generally speaking, they were correct?

10 A Basically, yes, sir.

11 Q And it didn't occur to you as long as you were going
12 to be that magnanimous to give the doctor credit
13 for the forty-eight, - you knew what that amount was,
14 didn't you?

15 A The payments from - -

16 Q Medicare.

17 A Yes, sir, we knew what they were.

18 Q But you didn't give him credit for that, did you?

19 A No, sir.

20 Q Didn't Doctor, in his interview with you, say he would
21 try to get it? You knew before you wrote that report
22 that the doctor told you he thought he had it and didn't
23 have it, didn't get one, isn't that in the interview
24 that you had with him?

25 A Well, Doctor said he talked to several people at Blue

D. P. Ciesla, for Government, Cross.

1 Shield and someone said it would be included on his
2 other 1099 and someone said "we didn't issue 1099's
3 this year", and he chose to accept that it was included
4 on his other 1099.

5 Q Well, you knew it wasn't, though, didn't you?

6 A They were not issued that year.

7 Q So why didn't you give him the benefit of the doubt
8 in that respect?

9 A I am not exactly sure. I see the point of the question,
10 but I just - -

11 Q For that matter, why didn't you give him the benefit
12 of the doubt about this whole case?

13 MR. BURNS: I object to that. These are issues,
14 I think - -

15 THE COURT: Mr. Fein, he is not the jury. The
16 jury is there. You talk to him about
17 particular points, not the whole case.
18 Sustained and the jury is directed to
19 disregard the question, an improper
20 question.

21
22 BY MR. FEIN:

23 Q In other words, these, - all of these reports, to a
24 degree, are based on certain assumptions made by you?

25 A You have to be more specific again.

D. P. Ciesla, for Government, Cross.

- 1 Q Well, you gave the doctor a deduction you don't know
2 he was entitled to?
- 3 A Correct.
- 4 Q Now, Doctor received some checks, certain checks were
5 dated December 30th of '66. I refer to Government
6 Exhibit 11 and particularly the eleven forty-nine and
7 eleven fifty. They are two checks from Blue Shield
8 to Dr. Booth. One is five o six twenty-five and one
9 is four hundred fifteen and they are dated December
10 30th, 1966, and they are deposited in Doctor's account
11 January 31, '67. Now, what year did you report those
12 into income, in which year?
- 13 A 1967.
- 14 Q Well, on what basis?
- 15 A Because the check was dated in 1966.
- 16 Q But does the doctor have to report in the year he
17 receives it or the year that the other party makes it
18 out?
- 19 A It is the year, - for a cash basis taxpayer, it is the
20 year the amount is received.
- 21 Q And do you know in fact that Doctor received this in
22 '66?
- 23 A No.
- 24 Q So you assumed that it was, right?
- 25 A Because it was dated in 1966.

D. P. Ciesla, for Government, Cross.

- 1 Q It was an assumption, right?
- 2 A I accepted the dates on the checks.
- 3 Q Do you know if you had any other items, - substantial
- 4 items like that?
- 5 A Like - -
- 6 Q The \$1,300, the other deduction.
- 7 A There was none that I, - that large.
- 8 Q Now, Mr. Ciesla, you talked to me on the telephone
- 9 several times, didn't you?
- 10 A Yes, sir.
- 11 Q And you made up a memorandum of those conversations,
- 12 right?
- 13 A Yes, sir.
- 14 Q I refer to Court Exhibit C89 for identification and
- 15 ask is this a memorandum, a memorandum of phone conversa-
- 16 tion between yourself and myself?
- 17 A Yes, sir.
- 18 Q And it says "witness"?
- 19 A Yes, sir.
- 20 Q What does that mean?
- 21 A That Mr., - in this case, Allen Francis was on another
- 22 extension listening to the conversation.
- 23 Q Did you tell me at the time that he was on this other
- 24 extension?
- 25 A No, sir.

D. P. Ciesla, for Government, Cross.

1 Q Is that part of your operating procedure?

2 A Having a witness on the telephone?

3 Q Yes.

4 A Well, it was at that time, I believe.

5 Q So if the same thing is true with the telephone conversa-
6 tion as shown in Court Exhibit C90?

7 A Yes.

8 Q And at this time, you had a different person listening
9 in on our conversation?

10 A Yes, sir.

11 Q And when you made the phone call to Mr. Lonardo as
12 shown in Court Exhibit - -

13 THE COURT: Mr. Fein, will you get to the
14 point. He had somebody else on the
15 phone with him.

16 MR. FEIN: Without telling me.

17 THE COURT: You made the point.

18 MR. FEIN: Okay.

19 THE COURT: Can't it be made simpler than that?

20 MR. FEIN: Well, it is as simple as I can make
21 it.

22 THE COURT: Was there anything else you wanted
23 to ask him about those phone conversa-
24 tions?
25

D. P. Ciesla, for Government, Cross.

1 BY MR. PEIN:

2 Q No, sir, not particularly. Well, just this one about
3 the Form 872 which we talked about earlier. This
4 refers to the Form 872 for '67 and this conversation
5 was April 13th, '71 and at that time, Dr. Booth had
6 not had his interview with you?

7 A That's correct.

8 Q And at that time, I told him on his behalf we would
9 not execute that Form 872 and give you the extension,
10 is that right?

11 A Correct.

12 Q But we did, subsequently, after we had our meeting with
13 you?

14 A Not for this year.

15 Q But for a subsequent year?

16 A For 1968, yes, sir.

17 Q And on May 18, 1971, reference to C90, the conversation
18 with me again, whether he considered, I asked "you
19 consider my request for giving us the information for
20 the year '66", right. He said, "as far as he was
21 concerned, it was a closed year and", meaning myself,
22 I did not give you any records for that year.

23 A That's correct. That is what you told me.

24 Q That was the taxpayer's right to do that, right?

25 A This is what you told me.

D. P. Ciesla, for Government, Cross.

- 1 Q Right?
- 2 A Right.
- 3 Q Okay, but after our meeting of October of '71, I did
- 4 give you these records, didn't I, on Dr. Booth's
- 5 behalf?
- 6 A You gave us the cancelled checks and check stubs for
- 7 1966.
- 8 Q Well, you just asked for information?
- 9 A Well, I may have at some prior time told you specifically
- 10 what I wanted or would like.
- 11 Q But when it came to '67 and '68 for which you had
- 12 previously received information, I turned anything
- 13 else over to you that I got subsequently, didn't I?
- 14 A Well, you, - which records are you referring to?
- 15 Q Well, I don't know, but you asked me several times
- 16 during the course of this investigation for additional
- 17 information and when they concerned '67 or '68, which
- 18 years you had originally started with, we furnished that
- 19 to the best of our ability, didn't we?
- 20 A You gave us some records.
- 21 Q Well, but we did, we gave you some records, right?
- 22 A You did give us some records.
- 23 Q Just one question. If Dr. Booth hadn't deposited his
- 24 checks, it would have been far more difficult for you
- 25 to ascertain his taxable income using the bank deposit

D. P. Ciesla, for Government, Cross.

1 cash expenditure method, is that correct?

2 A If he hadn't deposited the checks and not reported the
3 income, yes, it would have been more difficult.

4 MR. FEIN: I have no further questions, your
5 Honor.

6 THE COURT: Mr. Burns.

7 MR. BURNS: No questions, your Honor.

8 THE COURT: Thank you, Mr. Ciesla.

9 THE WITNESS: Thank you.

10 THE COURT: Ladies and gentlemen, we will be
11 in recess until tomorrow morning. We
12 will start again at 9:30. I have some
13 meetings earlier, but I think we can
14 probably start at 9:30 in the morning.
15 Will you please leave the sheets that
16 were there in the chairs. As a matter
17 of fact, I think it might be a good
18 idea, Mr. Burns, if you collected them
19 all and kept them all in one place. You
20 may now, at this time, walk out with the
21 Marshal, please.

22
23 (Jury escorted from the courtroom.)

24
25 THE COURT: Mr. Burns and Mr. Fein, before

64/3

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Library of Congress

Internal Revenue Service

Find No. and enter it in front of return, also last name and initials of agent. All letters CLAYBORN C. and GRETE G.		Last name BOOTH	Your serial number 076 22 2054
Street number and street name, city, state and zip code 532 MEMORIAL PARKWAY NIAGARA FALLS, NEW YORK 14303		Your telephone number 117 34 0997	

Please answer all questions, fill in the missing items, and explain changes on page 2

1. The original name and address used on original return (i.e., "123 Main Street"). In changing from separate to joint return, a married couple's addresses used on original returns should not change (as long as separate returns after the due date has passed for filing separate returns).

6274

4. This return is for calendar year 1965. If not for calendar year, state beginning date of fiscal year 1965.

5. Check one: ☒ I am a resident of the District of Columbia. ☐ I am not a resident of the District of Columbia. Do you declare that your original return is being filed in Buffalo, N.Y. or will be mailed to Buffalo, N.Y. ☒ Yes ☐ No

6. ☐ Single ☒ Married filing jointly ☐ Married filing separately ☐ Head of household ☐ Surviving spouse

7. ☐ On original return ☒ On this return

Integrate and Differentiate

1	Total income, Form 1040—line 4 for 1966, 1967 and 1968, or line 15c for 1963, Form 1040A—form 7 for 1966, 1967 and 1968	26,266.32	B, 652.16	44,918.48
2	Deductions. See instructions and explain any change on page 2.		-0-	

43757

Total tax (including discharge, self-employment tax, and tax from recapturing prior year investment credit. Form 1040—line 16 for 1966, 1967, and 1968, or line 18 for 1969; Form 1040A—item 6 for 1966, 1967, or Item E for 1968; Attach Schedule C-2, SE, or F-1 (Form 1040) if self-employment tax is changed.	4,812.97	5,423.05	10,236.02
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Payments and Credits

4 Federal income tax withheld and excess F.I.C.A. tax	99.00	99.00
5 Federal non-highway gasoline tax credit and regulated investment company credit		
6 Refunding for <u>Payments</u> Form 1042—line 18 for 1966, line 20 for 1967 and <u>1968</u> , or line 22 for 1969	5,000.00	5,000.00
7 Attach a sheet with original return, plus additional payments made after it was filed		
8 Total of lines 4 through 7, column C		5,099.00

Refund or Balance Due

10. Subtract line 9 from line 8, and enter result 286.00

11. If line 3, column C is more than line 10, enter Balance Due. Please Pay in Full With This Return 4,812.90

12. If line 3, column C is less than line 10, enter refund to be received 1,423.00

Under penalties of perjury, I declare that I have read and understand the contents of this statement, including accompanying exhibits, and that I have signed this statement and accompanying exhibits truthfully and correctly. I understand that this statement and accompanying exhibits will be used by the FBI in its investigation of the above-captioned matter. I understand that I am not entitled to see this statement and accompanying exhibits until after the investigation is complete. I understand that I am not entitled to see this statement and accompanying exhibits until after the investigation is complete. I understand that I am not entitled to see this statement and accompanying exhibits until after the investigation is complete.

245, Stapler, Hilton Hotel, Buffalo

BE SURE TO COMPLETE PAGE 2

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141a

Government's Exhibit 8.

107-1000000-1

67/2

1040X
(Rev. Sept. 1970)Amended U.S. Individual
Income Tax ReturnDepartment of the Treasury
Internal Revenue Service

Please print or type	First name and initial (If joint return, use first names and middle initials of both)	Last name	Taxpayers' social security number
	CLAYBURN C. and GRETE G.	BOOTH	076 22 2034
	Home address (Number and street - rural route)		Spouse's social security number
	532 MEMORIAL PARKWAY		117 34 0997
	City, town or post office, State, and ZIP code		
	NIAGARA FALLS, N.Y. 14301		

Please answer all questions, fill in applicable items, and explain changes on page 2.

Enter below name and address used on original return (if same as above, write "Same"). If changing from separate to joint return, enter names and addresses used on original returns. (Note: You cannot change from joint to separate returns after the due date has passed for filing separate returns.)

Same

a. This return is for calendar year 1967. If not for calendar year, insert ending date of fiscal year 19	b. Office where original return was filed?	c. Has the District Audit Division advised you that your original return is being or will be audited? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No. If "Yes," identify office
	Buffalo	
d. Filing Status Claimed	Single	Married filing jointly
On original return	<input type="checkbox"/>	<input checked="" type="checkbox"/>
On this return	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Married filing separately	Head of Household
	<input type="checkbox"/>	<input type="checkbox"/>
	Surviving Widow(er)	
	<input type="checkbox"/>	<input type="checkbox"/>

Income and Deductions	A. As originally reported or as adjusted (See Specific Instr.)	B. Net change (Increase or Decrease—explain on page 2)	C. Correct amount
1 Total income: Form 1040—line 9 for 1967 and 1968, line 15c for 1969, or line 18 for 1970; Form 1040A—item 7 for 1967 and 1968.	36,505.17	16,424.17	52,929.34
2 Deductions. See instructions and explain any change on page 2.		-0-	

Tax Liability

3 Total tax (including surcharge, self-employment tax, tax from recomputing prior year investment credit, and minimum tax, etc.): Form 1040—line 16 for 1967 and 1968, line 18 for 1969, or line 25 for 1970; Form 1040A—item 8 for 1967, or item 8(c) for 1968. Attach Schedule C-3, F-1, or SE (Form 1040) if self-employment tax is changed.	7,771.30	6,648.01	14,419.31
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Payments and Credits

4 Federal income tax withheld and excess F.I.C.A. tax	293.30		293.30
5 Credits for Federal special fuels, nonhighway gasoline and lubricating oil tax; also, regulated investment company credit.			
6 Estimated tax payments: Form 1040—line 20 for 1967 and 1968, line 22 for 1969, or line 27 for 1970.	5,000.00		5,000.00
7 Amount paid with original return, plus additional payments made after it was filed			2,478.00
8 Total of lines 4 through 7, column C			7,771.30

Refund or Balance Due

9 Overpayment, if any, shown on original return: Form 1040—line 23 for 1967 and 1968, line 25 for 1969, or line 31 for 1970; Form 1040A—item 11 for 1967 and 1968.			
10 Subtract line 9 from line 8, and enter result			7,771.30
11 If line 3, column C is more than line 10, enter Balance Due. Please Pay in Full With This Return			1,429.32
12 If line 3, column C is less than line 10, enter Refund to be received			6,648.01

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief this amended return is true, correct, and complete.

Sign
here

Taxpayer's signature

Grete G. Booth

Date

10/15/71

Signature of preparer other than taxpayer, based on all information of which he has any knowledge.

245 Statler Hilton Hotel, Buffalo, N.Y.

Address

BE SURE TO COMPLETE PAGE 2

1040X
(Rev. Sept. 1970)

Government's Exhibit 6.
Amended U.S. Individual
Income Tax Return

Department of the Treasury
Internal Revenue Service



First name and initial (If joint return, use first names and middle initials of both) **CIAYBURN C. and GRETE G.** Last name **BOOTH**

Home address (Number and street or rural route)
532 MEMORIAL PARKWAY

City, town or post office, State, and ZIP code
NIAGARA FALLS, NEW YORK 14301

Your social security number
076 22 2034

Spouse's social security number
117 34 0997

Please answer all questions, fill in applicable items, and explain changes on page 2.

Enter below name and address used on original return (if same as above, enter "Same"). If changing from separate to joint return, enter names and addresses used on original returns. (Note: You cannot change from joint to separate after the due date has passed for filing separate returns.)

88MO

a. This return is for calendar year 19 **68** If not for calendar year, enter ending date of fiscal year _____ 19 ____

b. Office where original return was filed? **100-10-10**

c. Has the District Audit Division advised you that your original return is being or will be audited? ☒ Yes ☐ No. If "Yes," identify office _____

d. Filing Status: **Single**

On original return ☐ Single ☒ Married filing jointly ☐ Married filing separately ☐ Head of Household ☐ Surviving Widow(er)

On this return ☐ Single ☒ Married filing jointly ☐ Married filing separately ☐ Head of Household ☐ Surviving Widow(er)

Income and Deductions	A. As originally reported or as adjusted (See Specific Instructions)	B. Net change (Increase or Decrease—explain on page 2)	C. Correct amount
1 Total income: Form 1040—line 9 for 1967 and 1968, line 15c for 1969, or line 18 for 1970; Form 1040A—item 7 for 1967 and 1968.	36,210.78	19,854.63	56,065.41
2 Deductions. See instructions and explain any change on page 2.		-0-	

Tax Liability			
3 Total tax (including surcharge, self-employment tax, tax from re-computing prior year investment credit, and minimum tax, etc.): Form 1040—line 16 for 1967 and 1968, line 18 for 1969, or line 26 for 1970; Form 1040A—item 8 for 1967, or item 8(c) for 1968. Attach Schedule C-3, F-1, or SE (Form 1040) if self-employment tax is changed.	8,274.85	9,539.47	17,814.32

Payments and Credits			
4 Federal income tax withheld and excess F.I.C.A. tax	322.40		322.40
5 Credits for Federal special fuels, nonhighway gasoline and lubricating oil tax; also, regulated investment company credit.			
6 Estimated tax payments: Form 1040—line 20 for 1967 and 1968, line 22 for 1969, or line 27 for 1970.	8,062.50		8,062.50
7 Amount paid with original return, plus additional payments made after it was filed			
8 Total of lines 4 through 7, column C			8,384.90

Refund or Balance Due		
9 Overpayment, if any, shown on original return: Form 1040—line 23 for 1967 and 1968, line 24 for 1969, or line 31 for 1970; Form 1040A—item 11 for 1967 and 1968.		110.05
10 Subtract line 9 from line 8, and enter result		8,274.85
11 If line 3, column C is more than line 10, enter Balance Due. Please Pay in Full with this return.		1,478.64
12 If line 3, column C is less than line 10, enter Refund to be received		9,539.47

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief this amended return is true, correct, and complete.

Signature of taxpayer: **Grete G. Booth** Signature of preparer other than taxpayer, based on all information of which he has any knowledge: **245 Statler Hilton Hotel, Buffalo**

BE SURE TO COMPLETE PAGE 2

PERSONAL STATEMENT

THE MARINE TRUST
COMPANY OF WESTERN NEW YORK

Name _____

Clayburn C. Booth
532 Memorial Parkway

Financial Conditions of

17 May 1966

Location

Background

IN ALL CASES USE THE WORD "NONE" WHERE NO AMOUNT IS TO BE ENTERED

<u>ASSETS</u>		<u>Dollars</u>	<u>Cents</u>	<u>LIABILITIES AND NET WORTH</u>		<u>Dollars</u>	<u>Cents</u>
Cash on hand		1	000	Notes Payable to this Bank			
Cash in this Bank		8	000	Notes Payable to (GARR - Co.)		1	802
Cash in () Bank				Other Notes &			
Stock and Bonds (See schedule)		2	500	Interest-Free Contracts Payable (See Schedule)			
Royal Estate (See schedule)		25	000	Accounts Payable			
Cash Value Life Insurance (See schedule)				Unpaid Real Estate Taxes			
Other Assets (Name) Auto				Liability for Income Taxes			
Mobility				Mortgages on Real Estate			
665 Automobile		3	000	Other Liabilities (Specify)			
Blue Eyed		12	000				
TOTAL		37	500	Total Liabilities			
				Net Worth			
				TOTAL			

Have you any liability on notes or accounts receivable discounted or sold? No If so, give details

Are you under contract, guaranteeing or accommodation making for others? AG If so, state amount \$_____ and for who _____

Have you any liability on real estate mortgage bonds covering property NOT SHOWN on this statement? 45 If so give details

Are there any suits, enclosures, or unsatisfied judgments against you, or have you ever gone through bankruptcy or made a general assignment of assets? If so, give details: _____

Have you any liability or losses? None If so, give details.

Have you any other contingent liability of any kind? NO If so, give details

What kind of car do you drive? 1977 Ford

ADJUTANT GENERAL'S OFFICE: DATE: 1/18/80 Fee or Disposition: 100 Other Income: 0

SCHEDULE OF LIFE INSURANCE (Including Waiver Policies of Special Benefit)

[illegible]

Other Insurance (amounts and kind)

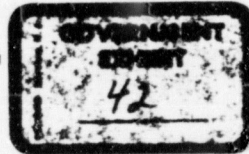
PLEASE ANSWER ALL QUESTIONS ON BOTH SIDES OF THIS FORM AND ON THE REVERSE SIDE.

BEST COPY AVAILABLE

145a

Government's Exhibit 42.

CLAYBURN C. BOOTH, M.D.
532 MEMORIAL PARKWAY
NIAGARA FALLS, NEW YORK 14301



Dear Mr. Luke,
Enclosed you
will find my
bank statements
for 1968.

In March 1968
and July 1968 I
transferred \$6,000
then \$7,000 to my
savings account, this
represents money
that I had saved

+ Accumulated over
many years dating
back to my military
time in 1950. These
monies were deposited
in my checking
account at various
intervals in case
I needed them for
business and when
my bank balance
improved then I
drafted a check against
it for deposit in
my checking account

Yours truly
N. C. Booth

AFFIDAVIT OF SERVICE BY MAIL

State of New York)
County of Genesee) ss.:
City of Batavia)

RE: USA vs
Clayburn C. Booth

Leslie R. Johnson

I, _____ being
duly sworn, say: I am over eighteen years of age
and an employee of the Batavia Times Publishing
Company, Batavia, New York.

On the 30th day of July, 1976
I mailed _____ copies of a printed Brief & _____ in Suppl. Appendix
the above case, in a sealed, postpaid wrapper, to:

10 copies to: A. Daniel Fusaro, Clerk
Court of Appeals, 2nd Circuit
United States Courthouse
Foley Square
New York, New York 10007

2 copies to: Hilary P. Bradford, Esq.
70 Niagara Street
Buffalo, New York 14202

at the First Class Post Office in Batavia, New
York. The package was mailed Special Delivery at
about 4:00 P.M. on said date at the request of:

Richard J. Arcara, U.S. Attorney, Att: Theodore J. Burns, Asst.

U.S. Attorney
502 U.S. Courthouse, Buffalo, New York 14202

Leslie R. Johnson

Sworn to before me this

30th day of July, 1976

Patricia A. Lacey

PATRICIA A. LACEY

Notary Public, State of N.Y. Genesee County
My Commission Expires Mar. 30, 1977